

18-0634-CV

United States Court of Appeals *for the* Second Circuit

LAUREL ZUCKERMAN, AS ANCILLARY ADMINISTRATRIX OF THE
ESTATE OF ALICE LEFFMANN,

Plaintiff-Appellant,

– v. –

THE METROPOLITAN MUSEUM OF ART,

Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX Volume 1 of 2 (Pages A-1 to A-293)

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CLOSED,APPEAL,ECF

**U.S. District Court
Southern District of New York (Foley Square)
CIVIL DOCKET FOR CASE #: 1:16-cv-07665-LAP**

Zuckerman v. The Metropolitan Museum of Art
Assigned to: Judge Loretta A. Preska
Cause: 28:1332 Diversity Action

Date Filed: 09/30/2016
Date Terminated: 02/07/2018
Jury Demand: Plaintiff
Nature of Suit: 380 Personal Property:
Other
Jurisdiction: Diversity

Plaintiff

Laurel Zuckerman
*as Ancillary Administratrix of the estate
of Alice Leffmann*

represented by **Howard Neil Spiegler**
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V.

Defendant

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Date Filed	#	Docket Text
09/30/2016	<u>1</u>	COMPLAINT against The Metropolitan Museum of Art. (Filing Fee \$ 400.00, Receipt Number 0208-12818828) Document filed by Laurel Zuckerman.(Kaye, Lawrence) (Entered: 09/30/2016)
09/30/2016	<u>2</u>	CIVIL COVER SHEET filed. (Kaye, Lawrence) (Entered: 09/30/2016)
09/30/2016	<u>3</u>	REQUEST FOR ISSUANCE OF SUMMONS as to The Metropolitan Museum of Art, re: <u>1</u> Complaint. Document filed by Laurel Zuckerman. (Kaye, Lawrence) (Entered: 09/30/2016)
09/30/2016	<u>4</u>	NOTICE OF APPEARANCE by Ross Lawrence Hirsch on behalf of Laurel Zuckerman. (Hirsch, Ross) (Entered: 09/30/2016)
09/30/2016	<u>5</u>	NOTICE OF APPEARANCE by Yael Miriam Weitz on behalf of Laurel Zuckerman. (Weitz, Yael) (Entered: 09/30/2016)
10/03/2016		***NOTICE TO ATTORNEY REGARDING CASE OPENING STATISTICAL ERROR CORRECTION: Notice to attorney Lawrence Michael Kaye. The following case opening statistical information was erroneously selected/entered: County code XX Out of U.S. The following correction(s) have been made to your case entry: the County code has been modified to New York. (pc) (Entered: 10/03/2016)
10/03/2016		CASE OPENING INITIAL ASSIGNMENT NOTICE: The above-entitled action is assigned to Judge Loretta A. Preska. Please download and review the Individual Practices of the assigned District Judge, located at http://nysd.uscourts.gov/judges/District . Attorneys are responsible for providing courtesy copies to judges where their Individual Practices require such. Please download and review the ECF Rules and Instructions, located at http://nysd.uscourts.gov/ecf_filing.php . (pc) (Entered: 10/03/2016)
10/03/2016		Magistrate Judge Kevin Nathaniel Fox is so designated. (pc) (Entered: 10/03/2016)

10/03/2016		Case Designated ECF. (pc) (Entered: 10/03/2016)
10/03/2016	<u>6</u>	ELECTRONIC SUMMONS ISSUED as to The Metropolitan Museum of Art. (pc) (Entered: 10/03/2016)
10/19/2016	<u>7</u>	STIPULATION: IT IS HEREBY STIPULATED AND AGREED THAT the time of defendant to move, answer or otherwise respond with respect to the Complaint filed by plaintiff in the above-captioned action shall be November 21, 2016; IT IS HEREBY STIPULATED AND AGREED THAT, to the extent defendant responds to the Complaint in the form of a dispositive motion, plaintiff's opposition shall be due on or before January 11, 2017, and defendant's reply shall be due on or before February 17, 2017. (As further set forth in this Order) The Metropolitan Museum of Art answer due 11/21/2016.(Responses due by 1/11/2017, Replies due by 2/17/2017.) (Signed by Judge Loretta A. Preska on 10/19/2016) (kl) (Entered: 10/20/2016)
11/02/2016	<u>8</u>	AMENDED COMPLAINT amending <u>1</u> Complaint against The Metropolitan Museum of Art with JURY DEMAND.Document filed by Laurel Zuckerman. Related document: <u>1</u> Complaint filed by Laurel Zuckerman.(Kaye, Lawrence) (Entered: 11/02/2016)
11/23/2016	<u>9</u>	NOTICE OF APPEARANCE by Howard Neil Spiegler on behalf of Laurel Zuckerman. (Spiegler, Howard) (Entered: 11/23/2016)
11/29/2016	<u>10</u>	STIPULATION: IT IS HEREBY STIPULATED AND AGREED THAT the time of defendant to move, answer or otherwise respond with respect to the Amended Complaint filed by plaintiff in the above-captioned action shall be November 30, 2016. IT IS HEREBY STIPULATED AND AGREED THAT, to the extent defendant responds to the Amended Complaint in the form of a dispositive motion, plaintiff's opposition shall be due on or before January 20, 2017, and defendant's reply shall be due on or before February 27, 2017. The Metropolitan Museum of Art answer due 11/30/2016.(Responses due by 1/20/2017, Replies due by 2/27/2017.) (Signed by Judge Loretta A. Preska on 11/28/2016) (kgo) (Entered: 11/29/2016)
11/30/2016	<u>11</u>	MOTION to Dismiss <i>the Amended Complaint</i> . Document filed by The Metropolitan Museum of Art.(Bowker, David) (Entered: 11/30/2016)
11/30/2016	<u>12</u>	MEMORANDUM OF LAW in Support re: <u>11</u> MOTION to Dismiss <i>the Amended Complaint</i> . . Document filed by The Metropolitan Museum of Art. (Bowker, David) (Entered: 11/30/2016)
11/30/2016	<u>13</u>	DECLARATION of David W. Bowker in Support re: <u>11</u> MOTION to Dismiss <i>the Amended Complaint</i> .. Document filed by The Metropolitan Museum of Art. (Attachments: # <u>1</u> Exhibit (Part 1 of 5), # <u>2</u> Exhibit (Part 2 of 5), # <u>3</u> Exhibit (Part 3 of 5), # <u>4</u> Exhibit (Part 4 of 5), # <u>5</u> Exhibit (Part 5 of 5))(Bowker, David) (Entered: 11/30/2016)
11/30/2016	<u>14</u>	RULE 7.1 CORPORATE DISCLOSURE STATEMENT. No Corporate Parent. Document filed by The Metropolitan Museum of Art.(Bowker, David) (Entered: 11/30/2016)
12/16/2016	<u>15</u>	

		CONSENT LETTER MOTION for Leave to File Excess Pages addressed to Judge Loretta A. Preska. Document filed by Laurel Zuckerman.(Hirsch, Ross) (Entered: 12/16/2016)
12/20/2016	<u>16</u>	ORDER granting <u>15</u> Letter Motion for Leave to File Excess Pages. SO ORDERED. (Signed by Judge Loretta A. Preska on 12/20/2016) (mro) (Entered: 12/20/2016)
01/20/2017	<u>17</u>	MEMORANDUM OF LAW in Opposition re: <u>11</u> MOTION to Dismiss <i>the Amended Complaint</i> . . Document filed by Laurel Zuckerman. (Kaye, Lawrence) (Entered: 01/20/2017)
01/20/2017	<u>18</u>	DECLARATION of Professor Dr. IUR. Marco Frigessi di Rattaluna in Opposition re: <u>11</u> MOTION to Dismiss <i>the Amended Complaint</i> .. Document filed by Laurel Zuckerman. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G, # <u>8</u> Exhibit H, # <u>9</u> Exhibit I, # <u>10</u> Exhibit J)(Kaye, Lawrence) (Entered: 01/20/2017)
01/20/2017	<u>19</u>	NOTICE of of Intent to Rely on Italian Law Pursuant to FRCP 44.1. Document filed by Laurel Zuckerman. (Kaye, Lawrence) (Entered: 01/20/2017)
01/20/2017	<u>20</u>	LETTER MOTION for Oral Argument on <u>11</u> MOTION to Dismiss <i>the Amended Complaint</i> addressed to Judge Loretta A. Preska. Document filed by Laurel Zuckerman.(Kaye, Lawrence) (Entered: 01/20/2017)
02/27/2017	<u>21</u>	REPLY MEMORANDUM OF LAW in Support re: <u>11</u> MOTION to Dismiss <i>the Amended Complaint</i> . . Document filed by The Metropolitan Mnseum of Art. (Bowker, David) (Entered: 02/27/2017)
02/27/2017	<u>22</u>	DECLARATION of David Bowker in Support re: <u>21</u> Reply Memorandum of Law in Support of Motion. Document filed by The Metropolitan Museum of Art. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5, # <u>6</u> Exhibit 6, # <u>7</u> Exhibit 7)(Bowker, David) (Entered: 02/27/2017)
03/06/2017	<u>23</u>	LETTER addressed to Judge Loretta A. Preska re: new authority pertinent to Defendant's motion to dismiss the Complaint. Document filed by Laurel Zuckerman. (Attachments: # <u>1</u> copy of decision)(Hirsch, Ross) (Entered: 03/06/2017)
03/17/2017	<u>24</u>	LETTER addressed to Judge Loretta A. Preska from David W. Bowker dated March 17, 2017 re: Response to Plaintiff's March 6, 2017 Letter. Document filed by The Metropolitan Museum of Art. (Attachments: # <u>1</u> Exhibit 1)(Bowker, David) (Entered: 03/17/2017)
03/20/2017	<u>25</u>	LETTER addressed to Judge Loretta A. Preska dated March 20, 2017 re: Response to Defendant's March 17, 2017 Letter. Document filed by Laurel Zuckerman.(Hirsch, Ross) (Entered: 03/20/2017)
05/25/2017	<u>26</u>	LETTER addressed to Judge Loretta A. Preska re: dismissal of Defendant's Surrogate's Court petition related to <u>11</u> MOTION to Dismiss. Document filed by Laurel Zuckerman.(Hirsch, Ross) (Entered: 05/25/2017)
06/12/2017	<u>27</u>	LETTER addressed to Judge Loretta A. Preska re: Surrogate's Court Decision dated June 5, 2017 referenced in <u>26</u> Letter related to <u>11</u> MOTION to Dismiss.

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		Document filed by Laurel Zuckerman. (Attachments: # <u>1</u> Decision)(Hirsch, Ross) (Entered: 06/12/2017)
06/16/2017	<u>28</u>	LETTER addressed to Judge Loretta A. Preska from David W. Bowker dated June 16, 2017 re: Response to Plaintiff's June 12, 2017 Letter. Document filed by The Metropolitan Museum of Art.(Bowker, David) (Entered: 06/16/2017)
06/16/2017	<u>29</u>	LETTER addressed to Judge Loretta A. Preska from Ross L. Hirsch dated 06/16/2017 re: Plaintiff writes in response to Defendant's Letter dated June 16, 2017.. Document filed by Laurel Zuckerman. (Attachments: # <u>1</u> Transcript of Oral Argument in Surrogate's Court.)(Hirsch, Ross) (Entered: 06/16/2017)
07/12/2017	<u>30</u>	LETTER addressed to Judge Loretta A. Preska from David W. Bowker dated July 12, 2017 re: Response to Plaintiff's June 16, 2017. Document filed by The Metropolitan Museum of Art.(Bowker, David) (Entered: 07/12/2017)
07/14/2017	<u>31</u>	MEMO ENDORSEMENT on re: <u>30</u> Letter filed by The Metropolitan Museum of Art. ENDORSEMENT: Plaintiff shall respond to the above by letter no later than July 21. (Signed by Judge Loretta A. Preska on 7/14/2017) (jwh) (Entered: 07/14/2017)
07/19/2017	<u>32</u>	LETTER addressed to Judge Loretta A. Preska re: in response to Defendant's letter, dated July 12, 2017. Document filed by Laurel Zuckerman.(Hirsch, Ross) (Entered: 07/19/2017)
07/26/2017	<u>33</u>	SCHEDULING ORDER granting <u>20</u> Letter Motion for Oral Argument: ORDERED that the parties are directed to appear in courtroom 12A, United States Courthouse, 500 Pearl Street, New York, New York, on September 6, 2017 at 10:30 a.m. for oral argument in the above-captioned action. (Signed by Judge Loretta A. Preska on 7/26/2017) (jwh) (Entered: 07/26/2017)
07/26/2017		Set/Reset Hearings: Oral Argument set for 9/6/2017 at 10:30 AM in Courtroom 12A, 500 Pearl Street, New York, NY 10007 before Judge Loretta A. Preska. (jwh) (Entered: 07/26/2017)
08/03/2017	<u>34</u>	LETTER MOTION for Oral Argument / <i>Letter Request for a new oral argument date on Defendant's motion to dismiss</i> addressed to Judge Loretta A. Preska from Ross L. Hirsch dated August 3, 2017. Document filed by Laurel Zuckerman.(Hirsch, Ross) (Entered: 08/03/2017)
08/04/2017	<u>35</u>	ORDER granting in part <u>34</u> Letter Motion for Oral Argument: The conference is adjourned to September 27 at 10:30 AM. (Signed by Judge Loretta A. Preska on 8/4/2017) (jwh) (Entered: 08/04/2017)
08/04/2017		Set/Reset Hearings: Oral Argument set for 9/27/2017 at 10:30 AM before Judge Loretta A. Preska. (jwh) (Entered: 08/04/2017)
09/27/2017		Minute Entry for proceedings held before Judge Loretta A. Preska: Oral Argument held on 9/27/2017 re: <u>35</u> Order on Mution for Oral Argument. (mph) (Entered: 10/05/2017)
02/07/2018	<u>36</u>	OPINION re: <u>11</u> MOTION to Dismiss <i>the Amended Complaint</i> filed by The Metropolitan Museum of Art. For the reasons discussed above, Defendant's Motion to Dismiss the Amended Complaint [dkt. no. 11] is granted. The Clerk

		of Court shall mark this action closed and all pending motions denied as moot. (Signed by Judge Loretta A. Preska on 2/7/2018) (mro) (Entered: 02/07/2018)
02/07/2018		Transmission to Judgments and Orders Clerk. Transmitted re: <u>36</u> Memorandum & Opinion, to the Judgments and Orders Clerk. (mro) (Entered: 02/07/2018)
02/07/2018	<u>37</u>	CLERK'S JUDGMENT re: <u>36</u> Memorandum & Opinion in favor of The Metropolitan Museum of Art against Laurel Zuckerman. It is hereby ORDERED, ADJUDGED AND DECREED: That for the reasons stated in the Court's Opinion dated February 7, 2018, Defendant's motion to dismiss the Amended Complaint is granted.; accordingly, the case is closed. (Signed by Clerk of Court Ruby Krajick on 02/07/2018) (Attachments: # <u>1</u> Right to Appeal) (km) (Main Document <u>37</u> replaced on 3/8/2018) (km). (Entered: 02/07/2018)
03/06/2018	<u>38</u>	NOTICE OF APPEAL from <u>37</u> Clerk's Judgment,. Document filed by Laurel Zuckerman. Filing fee \$ 505.00, receipt number 0208-14777129. Form C and Form D are due within 14 days to the Court of Appeals, Second Circuit. (Kaye, Lawrence) (Entered: 03/06/2018)
03/06/2018		Transmission of Notice of Appeal and Certified Copy of Docket Sheet to US Court of Appeals re: <u>38</u> Notice of Appeal. (tp) (Entered: 03/06/2018)
03/06/2018		Appeal Record Sent to USCA (Electronic File). Certified Indexed record on Appeal Electronic Files for <u>38</u> Notice of Appeal filed by Laurel Zuckerman were transmitted to the U.S. Court of Appeals. (tp) (Entered: 03/06/2018)
03/08/2018		Corrected Appeal Record Sent to USCA (Electronic File). Certified Indexed record on Appeal Electronic Files for <u>38</u> Notice of Appeal filed by Laurel Zuckerman USCA Case Number 18-634, were transmitted to the U.S. Court of Appeals. (tp) (Entered: 03/08/2018)

PACER Service Center			
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A-7

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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	:
LAUREL ZUCKERMAN, AS ANCILLARY	:
ADMINISTRATRIX OF THE ESTATE OF	:
ALICE LEFFMANN,	:
	:
	:
Plaintiff,	:
	:
vs.	:
	:
THE METROPOLITAN MUSEUM OF ART,	:
	:
Defendant.	:
-----	x

Index No. 16-cv-7665

COMPLAINT

JURY TRIAL DEMANDED

Plaintiff, Laurel Zuckerman, as Ancillary Administratrix of the estate of Alice Leffmann, through her undersigned counsel, Herrick, Feinstein LLP, for her Complaint against Defendant, alleges as follows:

NATURE OF THE ACTION

1. This is an action by Laurel Zuckerman, the Ancillary Administratrix of the estate of Alice Leffmann (the sole heir of Paul Friedrich Leffmann) (the "Leffmann estate"), to recover from New York's Metropolitan Museum of Art (the "Museum") a monumental work by Pablo Picasso entitled "The Actor," 1904-1905, oil on canvas, 77 1/4 x 45 3/8 in., signed lower right Picasso (the "Painting"), which was owned by Paul Friedrich Leffmann ("Leffmann" or "Paul"), a German Jew, from approximately 1912 until 1938.

2. In 1937, Paul, who until the advent of the Nazi regime had been a prosperous industrialist and investor, and his wife, Alice, were forced to flee Germany in fear for their lives, after losing their business, livelihood, home and most of their possessions due to Nazi persecution. The feasible escape route at the time was Italy, but any hope of finding a safe haven

from the Nazis in Italy was soon dashed. Shortly after their arrival, Mussolini and his Fascist regime increasingly adopted and implemented the Nazi pattern of rampant anti-Semitic policies and outright physical persecution of Jews, especially of immigrants from Austria and Germany. By 1938, it was clear that remaining in Italy was no longer an option, and, desperate to flee, the Leffmanns were forced to sell their remaining possession of substantial value, The Actor, at a price well below its actual value. They left Italy a few months after the sale, in October 1938, only days after the racist laws expelling foreign Jews from Italy were enacted.

3. The Leffmanns would not have disposed of this seminal work at that time, but for the Nazi and Fascist persecution to which they had been, and without doubt would continue to be, subjected. The Museum acquired the Painting by donation in 1952, at which time it either knew but did not disclose or should have known that the Painting had been owned by a Jewish refugee, Paul Leffmann, who disposed of the work in 1938 only because of Nazi and Fascist persecution.

THE PARTIES

4. Laurel Zuckerman, the great-grandniece of Paul and Alice Leffmann, received Ancillary Letters of Administration CTA for the estate of Alice Leffmann from the Surrogate's Court of the State of New York, New York County, on October 18, 2010. Pursuant to 28 U.S.C. § 1332(c)(2), since Alice Leffmann was a Swiss domiciliary, the Ancillary Administratrix is deemed to be a citizen of Switzerland as well.

5. Defendant, the Metropolitan Museum of Art, is a New York not-for-profit corporation operating as a public museum located in New York County, New York.

6. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332, because there is complete diversity of citizenship between Plaintiff and Defendant, and the matter in controversy exceeds \$75,000, exclusive of interest and costs.

7. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(a), (b) and (c), because Defendant is a New York not-for-profit corporation located in New York County and the Painting that is the subject matter of this dispute is located in this judicial district.

8. The Court has jurisdiction to grant the relief requested pursuant to 28 U.S.C. §§ 2201(a) and 2202.

STATEMENT OF FACTS

9. In 1912, Leffmann purchased the Painting, which, until he was forced by the circumstances in Fascist Italy to sell it under duress in 1938, was one of his most valuable acquisitions. From 1912 until at least 1929, Leffmann exhibited the Painting at a variety of exhibitions in Germany, at which he was identified as the owner of the Painting. The Painting was also featured in newspaper articles, magazines and monographs during this time.

10. During this time and up to the start of the Nazi period, Paul and Alice, German Jews, led a wonderful life together in Cologne, Germany. They had sizeable assets, including Atlantic Gummiwerk, a rubber manufacturing company that was one of the leading concerns of its kind in Europe, which Paul co-owned with Herbert Steinberg; real estate investment properties in Cologne (Hohenzollernring 74 and Friesenwall 77); and their home located at Haydnstrasse 13, Köln-Lindenthal. The Leffmanns' home included a collection of Chinese and Japanese artifacts and other artworks, including the masterwork by Pablo Picasso that is the subject of this action.

11. Beginning in 1933, the world the Leffmanns knew in Germany began to shatter. Adolf Hitler came to power and the racist laws directed against Jews quickly began to be enacted and enforced, leading to the adoption of the Nuremberg Laws ("The Laws for the Protection of German Blood and German Honor") on September 15, 1935. The Nuremberg laws deprived all German Jews, including Paul and Alice, of the rights and privileges of German citizenship,

ended any normal life or existence for Jews in Germany and relegated all Jews to a marginalized existence, a first step toward their mass extermination.

12. The Nuremberg Laws formalized a process of exclusion of Jews from Germany's economic and social life. It ushered in a process of eventual total dispossession through what became known as "Aryanization" or "*Arisierung*," first by takeovers by "Aryans" of Jewish-owned businesses and then by forcing Jews to surrender virtually all of their assets. In this process, all Jewish workers and managers were dismissed, and businesses and corporations belonging to Jewish owners were forcibly transferred from those owners to non-Jewish Germans, who "bought" them at prices officially fixed and well below market value. As a result, the number of Jewish-owned businesses in Germany was reduced by approximately two-thirds from April 1933 to April 1938. By that time, the Nazi regime moved to the final phase of dispossession, first requiring Jews to register all their domestic and foreign assets and then moving to possess themselves of all such assets.

13. On September 16, 1935, the Leffmanns were forced to sell their home to an Aryan German corporation, Rheinsiche Braunkohlensyndikats GmbH Köln; on December 19, 1935, Paul and his Jewish partner, Herbert Steinberg, were forced to transfer ownership of Atlantic Gummiwerk to Aloys Weyers (their non-Jewish minority business partner); and on July 27, 1936, Paul was forced to sell all of his real estate investments to Feuerversicherungsgesellschaft Rheinland AG, yet another Aryan German corporation. In return, Paul had no choice but to accept only nominal compensation. These were, indeed, not real sales at all, but essentially thefts by Nazi designees of substantially everything the Leffmanns ever owned, except for The Actor, which was, at the time, ever so fortuitously for them, located in neutral Switzerland.

14. Some time prior to their departure from Germany, Paul and Alice had arranged for The Actor to be held in Switzerland by a non-Jewish German acquaintance named Professor Heribert Reiners. Reiners kept The Actor in his family home in Fribourg, where it remained for its entire stay in Switzerland. For this reason only, The Actor was saved from Nazi confiscation or worse.

15. The Leffmanns' world was falling apart piece by piece. Having lost their home, their business and their investment properties, and witnessing the rise to power of the Nazi regime, its adoption of radical racist policies, and the accompanying increase in physical violence against Jews, it became clear that the persecution of Jews in Germany was growing at an alarming rate. Paul and Alice, like so many other German Jews, found themselves faced with the threat of growing violence, the risk of imprisonment and possibly deportation and death. Thus, to avoid the loss of the property they had left -- not to mention their lives -- they began planning their flight from Germany, liquidating their remaining assets in Germany to enable them to survive and escape. Their lives were changed forever as they abruptly lost their wealth and identity and became fugitives.

16. The Leffmanns finally were able to flee Germany in the spring of 1937. By 1937, when the Leffmanns' migration began, the Nazi regime had already put in place its ever tightening network of taxes, charges, and foreign exchange regulations designed to arrogate most, and subsequently all, Jewish-owned assets to itself. Emigrants were only able to leave with a tiny fraction of their assets. The Leffmanns, upon their escape from the Reich, consequently left having been dispossessed of most of what they once owned.

17. The groundwork for, as Reichsmarschall Hermann Göring put it, "getting rid of the Jews, but keeping their assets," had been laid as early as 1934 with a change in the tax law that

declared that the law be interpreted according to the National-Socialist ideology. This meant that Jews and other persecutees lost all legal recourse against discriminatory tax treatment and legislation. Subsequently, tax instruments became increasingly important in the set of quasi-legal instruments used to strip Jews of their assets. Among these, the flight tax (“*Reichsfluchtsteuer*”) was prominent. But even before this, the wave of emigration following Hitler’s accession to power had led to a tightening of the flight tax regulations not only by lowering its threshold, but even more important, by authorizing the tax offices to require security deposits as they saw fit. This became one of the more important instruments in the dispossession of emigrants and would-be emigrants, and was used, *inter alia*, to put Jews, especially wealthy ones, under surveillance by the foreign exchange authorities (the “*Devisenstelle*”).

18. By the end of 1936 (*i.e.*, shortly before the Leffmanns’ emigration), the increasingly precarious foreign exchange position of the Reich caused a further tightening of foreign exchange regulations, which imposed the death penalty on attempts to undercut these regulations and codified the *Devisenstelle*’s authority to block assets of persons found to be evading or intending to evade the regulations. Thus, even suspicion of the intention to emigrate led the authorities with ever increasing frequency to require a suspect to put his assets in a blocked emigrant’s account, which he could dispose of only with the approval of the *Devisenstelle*. Any legal transfers abroad could be made only from such blocked accounts via the *Deutsche Golddiskontbank*, the government bank through which foreign exchange transactions were made (the “*DeGo*”), at increasingly large discounts. In 1937 the discount charged by the *DeGo* exceeded 80%. This, then, was the environment in which the Leffmanns prepared for their flight from the Reich.

19. Another measure by which the Reich seized assets from fleeing Jews was the flight tax. Flight tax assessments were based on wealth tax declarations, which referred to wealth in the previous year and which were calculated at 25% of the value of the reported assets. Payment of the flight tax did not give the emigrant any right whatsoever to transfer abroad any of the remaining assets after payment of the tax. In fact, the flight tax amount typically would have been considerably higher than 25% of the assets actually owned at the time of emigration, as those who were persecuted by the Nazis -- as were the Leffmanns -- suffered dramatic financial losses in the period leading up to their emigration, so that their assets at the time of emigration would have been considerably smaller than those on which their flight tax was assessed. The payment of the flight tax was necessary to obtain the no-objection certification of the tax authorities, which in turn was necessary to obtain an exit permit. In the case of the Leffmanns, the flight tax was thus calculated at 25% of the assets they reported on their 1937 tax form, which would have included their total assets held in 1936. The Leffmanns paid this flight tax in the amount of 120,000 to 125,000 RM in cash.

20. While they would have preferred neutral Switzerland over Italy, where the Fascists were already in power and closer relations with Nazi Germany had begun to develop, at the time, a long-term stay in Switzerland would have been virtually impossible. Italy, as opposed to Switzerland, was one of the few European countries still allowing the immigration of German Jews, so that is where they went, hoping that Italy, with its significant Jewish population, would be a safe haven from the Nazi onslaught.

21. In light of the ever-tightening regulations governing the transfer of assets, emigrants sought alternative means of moving their funds abroad. One major avenue involved creating a triangular agreement whereby individuals who owned property outside the Reich and were in

need of RM would agree to exchange the currency for property, which they would then immediately liquidate upon arrival in the new country. This is exactly the type of transaction the Leffmanns took part in when, in December 1936, they purchased a house and factory in Italy for an inflated price of RM 180,000 from the heirs of Eugenio Usenbenz from Stuttgart and pre-agreed to sell the property back to a designated Italian purchaser for lire, at a considerable loss, upon their arrival in Italy a few months later.

22. In April 1937, the Leffmanns crossed the border into Italy, going first to Milan and then to Florence, where many other German Jewish refugees ended up, and where their newly acquired house and factory were located. Their hope, shared by other Jews emigrating from Austria and Germany to Italy, was that life there could go on in some form of normalcy, which it could not in Cologne.

23. Shortly after their arrival in Italy, as pre-agreed, the Leffmanns sold their newly-acquired properties to an Italian businessman named Gerolamo Valli, who was a business partner of the family from Stuttgart from whom they had originally purchased the house and factory. They sold the properties at a considerable loss -- for 456,500 Lira (or about 61,622 RM) -- and rented a home in Florence at Via Terme 29 and later at Via di San Vito 10.

24. But the Leffmanns' time in Italy was short-lived. It soon became clear that the nightmare from which they had fled was about to engulf them there as well. But moving on meant yet again losing a significant part of their remaining financial assets. The Leffmanns had already lost two-thirds of their initial RM investment in transfer costs, and they now stood to lose much of their remaining cash proceeds as the tight Italian foreign exchange restrictions forced them to seek conversion in "unofficial" ways. Paul was in his late sixties when they arrived in

Italy; Alice was six years his junior. They were living as refugees, unable to work in Italy, their prior lives destroyed by Nazi persecution, and on the run.

The Growing Influence of Nazi Germany on Mussolini and Italy

25. In April 1936, Italy and Germany had secretly adopted the Italo-German Police Agreement, which provided for the exchange of information, documents, evidence and identification materials by the police with regard to all emigrants characterized as “subversives,” which by definition included German Jews residing in Italy. Pursuant to this agreement, the Gestapo could compel the Italian police to interrogate, arrest and expel any German Jewish refugee.

26. By the fall of 1936 and into 1937, things had grown even bleaker for Jews. On November 1, 1936, Mussolini publicly announced the ratification of the Rome-Berlin Axis. By March 1937, Italian bookshops had begun to exhibit and openly sell the notorious book, The Protocols of the Elders of Zion, along with other anti-Semitic writings. During the summer and fall of 1937, the head of the Italian Police, Arturo Bocchini, and Mussolini accepted a proposal from the notorious SS General Reinhard Heydrich, the chief of the Security Service of the Reichsführer (the SS) and the German Secret State Police (the Gestapo), to assign a member of the German police to police headquarters in the ten largest Italian cities, including Florence, where the Leffmanns resided. This facilitated the Nazi efforts to check on “subversives,” that is, Jewish individuals.

27. By the fall of 1937, anti-Semitism in Italy, including in the highest levels of the Ministry of the Interior, dashed any illusions about a longer stay in Italy for the Leffmanns. That fall, Germany and Italy began to prepare for Hitler’s visit to Italy. In October, the Ministry of the Interior created lists of all German refugees residing in Italy’s various provinces. The lists were

intended to draw clear distinctions between “those who supported the Nazi regime” and “anti-Nazi refugees” or Jews. This was the first time that the Italian Government had explicitly associated all German Jews with anti-Nazi Germans. This marked a turning point in the 1936 Italo-German Police Agreement, with the Gestapo requesting these lists so that it could monitor “subversives” in anticipation of Hitler’s visit. From the beginning of January 1938 until Hitler’s visit in May, the Gestapo received a total of 599 lists from the police throughout Italy’s provinces.

Leffmann’s Sale of the Painting

28. As the situation grew increasingly desperate for Jews living in Italy, it became clear that it would only be a matter of time before the Fascist regime’s treatment of Jews would mimic that of Hitler’s Nazis. Paul and Alice had to make plans to leave, and this would require money. Switzerland was where they wanted to go to escape the horrors of Nazism and Fascism and find a truly safe haven. But, as was well known at the time, passage into Switzerland, permanent or temporary, did not come easily or cheaply. Given the urgency of their situation, Paul began to explore the possibility of selling his masterpiece, *The Actor*, with dealers in Paris. The events following the Austrian *Anschluss* and Hitler’s visit to Italy in May 1938 confirmed the correctness of his actions -- i.e., that they would have had no choice but to turn whatever assets they still controlled into cash.

29. Meanwhile, conditions for Jews in Italy only grew worse. On February 17, 1938, every newspaper in Italy published a Government announcement (“Diplomatic Notice Number 18,” issued on February 16), which stated that “[t]he Fascist Government reserves to itself the right to keep under close observation the activity of Jews newly arrived in our country.”

30. In March 1938, SS General Heydrich traveled to Rome to meet with the head of the Italian Police, Bocchini, in order to plan for Hitler's visit. Nazi police officials were posted at 13 Police Headquarters in border towns, ports and large cities to conduct interrogations and house searches. These officials, dressed in Nazi uniforms, arrived on April 10-11, 1938. Meanwhile, on March 18, 1938, the Italian Ministry of the Interior informed prefects in border provinces that "ex-Austrian Jewish subjects" should be denied entry into Italy.

31. Also in March 1938, the Italian Minister of Foreign Affairs informed the U.S. Ambassador to Italy that Italy would not be participating in the international initiative to "facilitate" the emigration of "political refugees" from Austria and Germany. Italian newspapers made clear that "political refugees" was a synonym for Jews.

32. In April 1938, in the face of the growing Nazi persecution spreading across Europe and into Italy, Paul escalated his efforts to liquidate The Actor.

33. In September of 1936, after he had been forced by the Nazis to part with nearly everything he owned, Leffmann had rejected an offer from the notorious art dealer, C.M. de Hauke of Jacques Seligmann & Co. (whom the U.S. State Department later identified as a trafficker in Nazi-looted art) to sell The Actor. Nearly two years later, on April 12, 1938, Leffmann, in an even more desperate state, reached out to de Hauke asking him if he would be interested in purchasing the Painting.

34. Just days after writing to de Hauke, the situation in Italy grew even worse. From April 24-26, General Heydrich, SS Reichsführer Heinrich Himmler (whom Hitler later entrusted with the planning and implementation of the "Final Solution") and SS General Josef "Sepp" Dietrich, the commander of Hitler's Leibstandarte (Hitler's personal army), went to Rome to complete preparations for Hitler's visit. For three weeks in April and May 1938 there were over

120 Gestapo and SS officers in Italy -- primarily in Florence, Rome and Naples. The Gestapo officials and Italian police continued investigations and surveillance of "suspicious persons" until the end of Hitler's visit, arresting at least 80 people in Florence. The arrests were carried out by the Italian police. Many German Jewish residents fled in anticipation, and as a result, of these arrests.

35. On May 3, Adolf Hitler arrived in Italy for his official state visit. It was a momentous occasion for Mussolini, and the Italian people turned out in the tens of thousands to greet the German leader. From May 3 through May 9, 1938, Hitler traveled to Rome, Naples and Florence. This was no typical state visit. Mussolini, anxious to strengthen the Axis alliance, made sure that Italy spared no expense in putting on its grandest show for Hitler. The streets of these Italian cities were covered in thousands of Nazi swastika flags, which flew alongside Italy's tricolor; flowerbeds were decorated in the shape of swastikas and photographs of Mussolini and Hitler were made into postcards and displayed in shop windows. Parades and military displays in honor of Hitler, attended by thousands of Italians, young and old, took place in every city he visited. In Florence, the last city visited by Hitler on May 9th, city officials made an official postmark that commemorated Hitler's visit. Mail sent during that time was stamped "1938 Il Führer a Firenze" and decorated with swastikas.

36. Hitler's visit made clear that the situation in Italy for Jews was tense and the fear palpable. For Leffmann, the time to flee Italy was quickly approaching, so he continued to try to sell the Painting through de Hauke. Trying to raise as much cash as possible for the flight and whatever the future would bring, Leffmann responded to a letter from de Hauke, telling him that he had already rejected an offer obtained through another Paris dealer (presumably Käthe Perls)

for U.S. \$12,000 (net of commission). It is clear from the letter that Leffmann was desperately trying to improve his leverage to maximize the amount of hard currency he could raise.

37. Violence was increasing and the persecution of Jews was on the rise. All foreign Jews in Italy risked arrest and possibly deportation and death. Paul and Alice were in fear of their liberty and their lives. There was no time left. So just days after telling de Hauke that he had rejected Mrs. Perls' low offer, in late June 1938, Leffmann sold the Painting at the very price he told Perls and de Hauke he would not consider. He finally accepted Käte Perls' offer of U.S. \$13,200 (U.S. \$12,000 after a standard 10% selling commission), who was acting on behalf of her ex-husband, Hugo Perls, also an art dealer, and art dealer Paul Rosenberg, with whom Perls was buying the Painting.

38. On July 26, 1938, Frank Perls, Käte's son, who was also a dealer, wrote to automobile titan Walter P. Chrysler Jr., asking if he would be interested in purchasing *The Actor*. Obviously aware of the "sensitivity" of his overture, having just acquired a Picasso masterpiece from a German Jew on the run from Nazi Germany living in Fascist Italy for a price lower than the seller wanted, he described the work as having been purchased by Mrs. Perls from "an Italian collector" -- an outright lie.

39. Meanwhile, the plight of the Jews in Italy deteriorated even further. In July 1938, the Leffmanns, as German Jews, submitted their "Directory of Jewish Assets" forms detailing all of their assets, which the Reich required all Jews (even those living abroad) to complete. The penalties for failing to comply with this requirement included "fines, incarceration, prison, seizure of assets."

40. In August 1938, enrollment of foreign Jews in Italian schools was prohibited. A Jewish census, in which the Leffmanns were forced to participate, was conducted in preparation

for the Italian racial laws, which were soon to follow. A legal definition of what constituted a “Jew” was considered, and discriminatory legislation was drafted. The Italian government increased surveillance of Jews because of the fear that Jews would transfer their assets out of Italy or emigrate and take their assets with them. A series of anti-Semitic publications were released, among them the infamous “*Manifesto degli scienziati razzisti*” (“Manifesto of the Racial Scientists”), which attempted to provide a scientific justification for the coming racial laws, and the venomous magazine, “*La difesa della razza*” (“The Defense of the Race”). In addition, a number of regional newspapers published lists of many of the names of Jewish families residing in Florence.

41. On September 7, 1938, the first anti-Semitic racial laws were introduced in Italy, including “Royal Enforceable Decree Number 1381,” which was approved by the Council of Ministers on September 1st and was published in daily newspapers on September 2nd. It was signed by the King on September 7th and was published in the “*Gazzetta Ufficiale*” on September 12th. With this Enforceable Decree, all “alien Jews” were forbidden from residing in Italy. All Jews who arrived in Italy after January 1, 1919 had to leave Italy within six months (*i.e.*, by March 12, 1939) or face forcible expulsion. Bank accounts opened in Italy by foreign Jews were immediately blocked. At that point in 1938, Italy’s anti-Jewish measures had become extremely draconian, and in some instances had become even harsher than the corresponding measures enacted in Germany.

42. The Leffmanns had no choice but to prepare for immediate departure. Paul had sold The Actor not a moment too soon. Switzerland was the obvious destination. But Switzerland, which already had strict border controls, became even more difficult to enter beginning in 1938. In fact, it was about the worst time to try to enter Switzerland. Switzerland, following the

incorporation of Austria into the Reich, imposed visa requirements on holders of Austrian passports on March 28, 1938, and in April began negotiations with the Germans regarding the introduction of the notorious “J” stamp. On August 18-19, 1938 the Swiss decided to reject all refugees without a visa; on October 4, 1938, with an agreement reached on the adoption of the “J” stamp, they imposed visa requirements on German “non-Aryans.” Receiving asylum was virtually impossible, and German and Austrian Jews could only enter Switzerland with a temporary residence permit which, given the strict controls, and asset requirements imposed by the Swiss government, was not easy to obtain.

43. Sometime before September 10, 1938, however, the Leffmanns managed to obtain a *Toleranzbewilligung* (a tolerance or temporary residence visa) from Switzerland, valid from September 10, 1938 to September 10, 1941. In October 1938, just days after the enactment of the racial laws expelling them from Italy, the Leffmanns fled yet again, this time to Switzerland, where they were allowed to stay only temporarily.

44. By the time the Leffmanns arrived in Switzerland, the *Anschluss* and other persecutory events had triggered a rising wave of flight from the Reich. Consequently, Swiss authorities required emigrants to pay substantial sums through a complex system of taxes and “deposits” (of which the emigrant had no expectation of recovery).

45. In October 1938, all German Jews were required to obtain a new passport issued by the German government stamped with the letter “J” for Jude, which definitively identified them as being Jewish. As German citizens who required a passport to continue their flight, the Leffmanns had no choice but to comply.

46. The Leffmanns temporarily resided in Bern, Switzerland, but, unable to stay, prepared to flee yet again, this time to Brazil. In addition to bribes that were typically required to

obtain necessary documentation, Brazil would only provide visas for Jews who could transfer more than 400 contos (USD \$20,000) to the Banco do Brasil. On May 7, 1941, the Leffmanns, still on the run, immigrated to Rio de Janeiro, Brazil, where they lived for the next six years. But even in Brazil, they could not escape the effects of the ongoing war. All German residents living there, including the Leffmanns, were forced to pay a levy imposed by the Brazilian government of 20,000 Swiss Francs (or about U.S. \$4,641).

47. Given the various payments required by Switzerland, as well as those that the Leffmanns would need to enter Brazil, the Leffmanns depended on the \$12,000 (or approximately SF 52,440 in 1938) they received from the sale of The Actor, as it constituted the majority of the Leffmanns' available resources in June 1938. Had the Leffmanns not fled for Brazil when they did, they would have likely suffered a much more tragic fate at the hands of the Nazis regime and its allies.

48. The Leffmanns were not able to return to Europe until after the War had ended. In 1947 they settled in Zurich, Switzerland.

49. Paul Leffmann died on May 4, 1956 in Zurich, Switzerland at the age of 85. He left his entire estate to his wife, Alice Brandenstein Leffmann.

50. Alice Leffmann died on June 25, 1966 in Zurich, Switzerland at the age of 89. She left her entire estate to 12 heirs (all relatives or friends).

The Ancillary Estate of Alice Leffmann

51. On August 26, 2010, Nicholas John Day, the Executor named in the will of Alice Anna Berta Brandenstein, a legatee named in the will of Alice Leffmann, submitted a Petition for Ancillary Probate for the estate of Alice Leffmann in the Surrogate's Court of the State of New York, New York County authorizing Laurel Zuckerman to receive Ancillary Letters of

Administration CTA of the estate. On October 18, 2010, Laurel Zuckerman received Ancillary Letters of Administration CTA and was named Ancillary Administratrix by the Surrogate's Court of the State of New York, New York County.

The Museum's Acquisition of the Painting

52. The immediate history of the Painting after it was purchased by Perls and Rosenberg in June of 1938 is unclear, but it is known that after the purchase, the Painting was loaned by art dealer Paul Rosenberg to the Museum of Modern Art ("MoMA") in New York in 1939. In the paperwork documenting the loan, Rosenberg requested that MoMA insure the Painting for \$18,000 (a difference of \$6,000 or a 50% increase over what had been paid to Leffmann less than a year earlier).

53. Sometime prior to October 28, 1940, the Painting was consigned for sale by Rosenberg to the well-known M. Knoedler & Co. Gallery in New York, New York. On November 14, 1941, M. Knoedler & Co. sold the Painting to Thelma Chrysler Foy for \$22,500 (a difference of U.S. \$9,300 or a 70% increase from the price paid to Leffmann).

54. Thelma Chrysler Foy donated the Painting to the Museum in 1952, where it remains today.

55. As a matter of law and public policy, good title to the Painting never passed from Leffmann to Perls and Rosenberg, and thus neither Perls, Rosenberg nor Foy could convey good title to the Painting. Therefore, the Museum never acquired good title to the Painting, and it remains the property of the Leffmann estate.

56. The Museum readily accepted this donation, no questions asked, although the Museum had specifically been warned about accepting or buying art misappropriated during the Nazi era. As early as 1945, the American Commission for the Protection and Salvage of Artistic

and Historic Monuments in War Areas (also known as the “Roberts Commission”) issued a circular, addressed “to museums, art and antique dealers and auction houses,” which emphasized the importance of bringing “specific examples of looting of works of art or cultural material [] to light as soon as possible,” and which encouraged museums and others to inform the Roberts Commission of objects of “special artistic importance” that had “obscure or suspicious” provenances. The Commission also issued the following statement: “[i]t is, of course, obvious that no clear title can be passed on objects that have been looted from public or private collections abroad.” In 1947, five years before the Painting was donated to the Museum, the Department of State sent American museums, as well as universities, libraries, art dealers and book sellers, another bulletin, in which it highlighted the responsibility of museums and other American institutions to exercise “continued vigilance” in identifying cultural objects with provenances tainted by World War II. The directive underscored the need for museums to notify the Secretary of State of any objects identified as lacking a clear title. In 1950, the College Art Association of America reprinted the directive in *College Art Journal*, and in 1951, the American Federation of Arts reprinted the directive again in *Magazine of Art*. Despite these repeated warnings, the Museum failed to meet the basic obligations required under the Department of State’s directives with regard to its acquisition of The Actor.

57. Leffmann’s ownership of the Painting through 1938 was discernable at the time of the Museum’s acquisition. The Museum should reasonably have known about Leffmann’s ownership up and until 1938, and the circumstances under which he was compelled to dispose of the Painting because of Nazi and Fascist persecution.

58. Nonetheless, the Museum’s published provenance for the Painting was manifestly erroneous when it first appeared in the Museum’s catalogue of French Paintings in 1967. Instead

of saying that Leffmann owned the Painting from 1912 until 1938, it read as follows: “P. Leffmann, Cologne (in 1912); a German private collection (until 1938) . . .”, thus indicating that Leffmann no longer owned the Painting in the years leading up to its sale in 1938.

59. This remained the official Museum provenance for the Painting for the next 45 years, including when it was included on the Museum’s website as part of the “Provenance Research Project,” which is a section of the website that includes all artworks in the Museum’s collection that have an incomplete Nazi-era provenance.

60. From 1967 to 2010, the provenance listing was changed numerous times. It continued to state, however, that the Painting was part of a German private collection, and not that it was owned by Leffmann continuously from 1912 until 1938.

61. In connection with a major exhibition of the Museum’s Picasso holdings in 2010 entitled, “Picasso in the Metropolitan Museum of Art”, the provenance was changed yet again. The forward to the exhibition catalogue by the Museum’s director, Thomas P. Campbell, states that “[m]ore than a dozen members of our curatorial and conservation staff devoted the last year to an intensive study of the Museum’s works by Picasso. . . Thanks to these extensive studies, for example, we have been able to confirm the authorship of one painting and to better establish the early ownership and exhibition history of many other works.” Picasso in the Metropolitan Museum of Art, The Metropolitan Museum of Art, New York, 2010, p. vii.

62. Despite purportedly careful examination, as of 2010, the provenance of the Painting continued to erroneously list the “private collection” subsequent to the Leffmann listing.

63. All of these versions of the Painting’s provenance were incorrect. Paul owned the Painting from 1912 until its “sale” under duress to Perls in June 1938. The Museum’s asserted explanation for the forty-five years of erroneous provenance only underscores its improper

conduct when it first acquired the Painting. The Museum asserts that the genesis of the original provenance entry in 1967 was that, some fifteen years after acquiring the Painting, the Museum's curators finally asked Perls where he had obtained the Painting and that his answer was that he had bought it in 1938 from a "German professor" in Solothurn, Switzerland who had been "thrown out by Nazis." (Perls allegedly could not remember the name of the German collector when asked in the 1960's.) Therefore, at least at the time of the cataloguing, red flags should have been raised for the Museum. It should have tried to correct its error of the early 1950's by then investigating the acquisition of the Painting, especially because Perls already said that he could not remember the name of the German collector and, more pointedly, that the seller had been "thrown out" of Germany by the Nazis. But obviously no investigation was conducted in 1967, and the provenance published in 1967, and for many years thereafter, was erroneous.

64. In October 2011, only after extensive correspondence with Plaintiff, the Museum revised its provenance yet again. The revised provenance omitted the reference to the mysterious private German collector who had purportedly owned The Actor from 1913-1938 and finally acknowledged Leffmann's ownership through 1938 and his transfer of it during the Nazi era.

Plaintiff Demands the Return of the Painting and the Museum Refuses

65. On September 8, 2010, Plaintiff's attorneys, Herrick, Feinstein LLP, wrote to the General Counsel of the Museum, demanding the return of the Painting, but the Museum has failed and refused to deliver the Painting to Plaintiff. The Painting remains in the possession of the Defendant through the filing of this Complaint.

66. On February 7, 2011, the parties entered into a standstill agreement tolling any statute of limitations as of February 7, 2011. Such agreement was thereafter amended several times to

terminate on September 30, 2016. The final amendment of the standstill agreement terminated on September 30, 2016. The action is therefore timely.

FIRST CLAIM

(For Replevin)

67. Plaintiff repeats and realleges each of the allegations contained in the preceding paragraphs of this Complaint as if fully set forth herein.

68. The Leffmann estate is the rightful owner of the Painting, and Plaintiff, as Ancillary Administratrix of the Leffmann estate, is thus entitled to recover sole possession of the Painting.

69. The Painting is a unique and irreplaceable work of art.

70. Plaintiff has demanded the return of the Painting. Defendant has failed and refused to deliver the Painting to Plaintiff.

71. Plaintiff is entitled to the immediate return of the Painting.

SECOND CLAIM

(For Conversion)

72. Plaintiff repeats and realleges each of the allegations contained in the preceding paragraphs of this Complaint as if fully set forth herein.

73. The Leffmann estate is the rightful owner of the Painting, and Plaintiff, as Ancillary Administratrix of the Leffmann estate, is thus entitled to recover sole possession of the Painting.

74. Plaintiff has demanded the return of the Painting. Defendant has failed and refused to deliver the Painting to Plaintiff.

75. Defendant converted and appropriated the Painting for its own use in complete disregard and derogation of the Leffmann estate's rights, title and interest to the Painting.

76. As a result of Defendant's wrongful conduct, the Leffmann estate has suffered damages, and Plaintiff is entitled to an award, in an amount to be determined at trial, but estimated to be in excess of \$100 million.

THIRD CLAIM

(For Declaratory Judgment)

77. Plaintiff repeats and realleges each of the allegations contained in the preceding paragraphs of this Complaint as if fully set forth herein.

78. The Leffmann estate is the rightful owner of the Painting, and Plaintiff, as Ancillary Administratrix of the Leffmann estate, is thus entitled to the immediate possession of the Painting.

79. Defendant does not have good title to the Painting.

80. Plaintiff has demanded the return of the Painting. Defendant has failed and refused to deliver the Painting to Plaintiff.

81. Plaintiff is entitled to a judgment declaring that the Leffmann estate is the sole owner of the Painting.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendant as follows:

- a) On the First Claim, directing that Defendant immediately deliver the Painting to Plaintiff;
- b) On the Second Claim, in the alternative, awarding Plaintiff damages in an amount to be proven at trial, but estimated to be in excess of \$100 million;
- c) On the Third Claim, declaring that the Leffmann estate is the rightful owner of the Painting and that Plaintiff, as Ancillary Administratrix of the Leffmann estate, is entitled to immediate possession of the Painting;
- d) Awarding Plaintiff fees and costs pursuant to Fed. R. Civ. P. 54(d); and
- e) Awarding any such other and further relief as the Court deems just and proper.

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Dated: New York, New York
September 30, 2016

Respectfully submitted,

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of the estate of Alice Leffmann

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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LAUREL ZUCKERMAN, AS ANCILLARY	:	
ADMINISTRATRIX OF THE ESTATE OF	:	Index No. 16-civ-07665
ALICE LEFFMANN,	:	
	:	
Plaintiff,	:	
	:	
vs.	:	<u>AMENDED COMPLAINT</u>
	:	
THE METROPOLITAN MUSEUM OF ART,	:	<u>JURY TRIAL DEMANDED</u>
	:	
Defendant.	:	
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Plaintiff, Laurel Zuckerman, as Ancillary Administratrix of the estate of Alice Leffmann, through her undersigned counsel, Herrick, Feinstein LLP, for her Complaint against Defendant, alleges as follows:

NATURE OF THE ACTION

1. This is an action by Laurel Zuckerman, the Ancillary Administratrix of the estate of Alice Leffmann (the sole heir of Paul Friedrich Leffmann) (the "Leffmann estate"), to recover from New York's Metropolitan Museum of Art (the "Museum") a monumental work by Pablo Picasso entitled "The Actor," 1904-1905, oil on canvas, 77 1/4 x 45 3/8 in., signed lower right Picasso (the "Painting"), which was owned by Paul Friedrich Leffmann ("Leffmann" or "Paul"), a German Jew, from approximately 1912 until 1938.

2. In 1937, Paul, who until the advent of the Nazi regime had been a prosperous industrialist and investor, and his wife, Alice, were forced to flee Germany in fear for their lives, after losing their business, livelihood, home and most of their possessions due to Nazi persecution. The feasible escape route at the time was Italy, but any hope of finding a safe haven

from the Nazis in Italy was soon dashed. Shortly after their arrival, Mussolini and his Fascist regime increasingly adopted and implemented the Nazi pattern of rampant anti-Semitic policies and outright physical persecution of Jews, especially of immigrants from Austria and Germany. By 1938, it was clear that remaining in Italy was no longer an option, and, desperate to flee, the Leffmanns were forced to sell their remaining possession of substantial value, The Actor, at a price well below its actual value. They left Italy a few months after the sale, in October 1938, only days after the racist laws expelling foreign Jews from Italy were enacted.

3. The Leffmanns would not have disposed of this seminal work at that time, but for the Nazi and Fascist persecution to which they had been, and without doubt would continue to be, subjected.

THE PARTIES

4. Laurel Zuckerman, the great-grandniece of Paul and Alice Leffmann, received Ancillary Letters of Administration CTA for the estate of Alice Leffmann from the Surrogate's Court of the State of New York, New York County, on October 18, 2010. Pursuant to 28 U.S.C. § 1332(c)(2), since Alice Leffmann was a Swiss domiciliary, the Ancillary Administratrix is deemed to be a citizen of Switzerland as well.

5. Defendant, the Metropolitan Museum of Art, is a New York not-for-profit corporation operating as a public museum located in New York County, New York.

6. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332, because there is complete diversity of citizenship between Plaintiff and Defendant, and the matter in controversy exceeds \$75,000, exclusive of interest and costs.

7. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(a), (b) and (c), because Defendant is a New York not-for-profit corporation located in New York County and the Painting that is the subject matter of this dispute is located in this judicial district.

8. The Court has jurisdiction to grant the relief requested pursuant to 28 U.S.C. §§ 2201(a) and 2202.

STATEMENT OF FACTS

9. In 1912, Leffmann purchased the Painting, which, until he was forced by the circumstances in Fascist Italy to sell it under duress in 1938, was one of his most valuable acquisitions. From 1912 until at least 1929, Leffmann exhibited the Painting at a variety of exhibitions in Germany, at which he was identified as the owner of the Painting. The Painting was also featured in newspaper articles, magazines and monographs during this time.

10. During this time and up to the start of the Nazi period, Paul and Alice, German Jews, led a wonderful life together in Cologne, Germany. They had sizeable assets, including Atlantic Gummiwerk, a rubber manufacturing company that was one of the leading concerns of its kind in Europe, which Paul co-owned with Herbert Steinberg; real estate investment properties in Cologne (Hohenzollernring 74 and Friesenwall 77); and their home located at Haydnstrasse 13, Köln-Lindenthal. The Leffmanns' home included a collection of Chinese and Japanese artifacts and other artworks, including the masterwork by Pablo Picasso that is the subject of this action.

11. Beginning in 1933, the world the Leffmanns knew in Germany began to shatter. Adolf Hitler came to power and the racist laws directed against Jews quickly began to be enacted and enforced, leading to the adoption of the Nuremberg Laws ("The Laws for the Protection of German Blood and German Honor") on September 15, 1935. The Nuremberg laws deprived all German Jews, including Paul and Alice, of the rights and privileges of German citizenship,

ended any normal life or existence for Jews in Germany and relegated all Jews to a marginalized existence, a first step toward their mass extermination.

12. The Nuremberg Laws formalized a process of exclusion of Jews from Germany's economic and social life. It ushered in a process of eventual total dispossession through what became known as "Aryanization" or "*Arisierung*," first by takeovers by "Aryans" of Jewish-owned businesses and then by forcing Jews to surrender virtually all of their assets. In this process, all Jewish workers and managers were dismissed, and businesses and corporations belonging to Jewish owners were forcibly transferred from those owners to non-Jewish Germans, who "bought" them at prices officially fixed and well below market value. As a result, the number of Jewish-owned businesses in Germany was reduced by approximately two-thirds from April 1933 to April 1938. By that time, the Nazi regime moved to the final phase of dispossession, first requiring Jews to register all their domestic and foreign assets and then moving to possess themselves of all such assets.

13. On September 16, 1935, the Leffmanns were forced to sell their home to an Aryan German corporation, Rheinsiche Braunkohlensyndikats GmbH Köln; on December 19, 1935, Paul and his Jewish partner, Herbert Steinberg, were forced to transfer ownership of Atlantic Gummiwerk to Aloys Weyers (their non-Jewish minority business partner); and on July 27, 1936, Paul was forced to sell all of his real estate investments to Feuerversicherungsgesellschaft Rheinland AG, yet another Aryan German corporation. In return, Paul had no choice but to accept only nominal compensation. These were, indeed, not real sales at all, but essentially thefts by Nazi designees of substantially everything the Leffmanns ever owned, except for The Actor, which was, at the time, ever so fortuitously for them, located in neutral Switzerland.

14. Some time prior to their departure from Germany, Paul and Alice had arranged for The Actor to be held in Switzerland by a non-Jewish German acquaintance named Professor Heribert Reiners. Reiners kept The Actor in his family home in Fribourg, where it remained for its entire stay in Switzerland. For this reason only, The Actor was saved from Nazi confiscation or worse.

15. The Leffmanns' world was falling apart piece by piece. Having lost their home, their business and their investment properties, and witnessing the rise to power of the Nazi regime, its adoption of radical racist policies, and the accompanying increase in physical violence against Jews, it became clear that the persecution of Jews in Germany was growing at an alarming rate. Paul and Alice, like so many other German Jews, found themselves faced with the threat of growing violence, the risk of imprisonment and possibly deportation and death. Thus, to avoid the loss of the property they had left -- not to mention their lives -- they began planning their flight from Germany, liquidating their remaining assets in Germany to enable them to survive and escape. Their lives were changed forever as they abruptly lost their wealth and identity and became fugitives.

16. The Leffmanns finally were able to flee Germany in the spring of 1937. By 1937, when the Leffmanns' migration began, the Nazi regime had already put in place its ever tightening network of taxes, charges, and foreign exchange regulations designed to arrogate most, and subsequently all, Jewish-owned assets to itself. Emigrants were only able to leave with a tiny fraction of their assets. The Leffmanns, upon their escape from the Reich, consequently left having been dispossessed of most of what they once owned.

17. The groundwork for, as Reichsmarschall Hermann Göring put it, "getting rid of the Jews, but keeping their assets," had been laid as early as 1934 with a change in the tax law that

declared that the law be interpreted according to the National-Socialist ideology. This meant that Jews and other persecutees lost all legal recourse against discriminatory tax treatment and legislation. Subsequently, tax instruments became increasingly important in the set of quasi-legal instruments used to strip Jews of their assets. Among these, the flight tax ("*Reichsfluchtsteuer*") was prominent. But even before this, the wave of emigration following Hitler's accession to power had led to a tightening of the flight tax regulations not only by lowering its threshold, but even more important, by authorizing the tax offices to require security deposits as they saw fit. This became one of the more important instruments in the dispossession of emigrants and would-be emigrants, and was used, *inter alia*, to put Jews, especially wealthy ones, under surveillance by the foreign exchange authorities (the "*Devisenstelle*").

18. By the end of 1936 (i.e., shortly before the Leffmanns' emigration), the increasingly precarious foreign exchange position of the Reich caused a further tightening of foreign exchange regulations, which imposed the death penalty on attempts to undercut these regulations and codified the *Devisenstelle's* authority to block assets of persons found to be evading or intending to evade the regulations. Thus, even suspicion of the intention to emigrate led the authorities with ever increasing frequency to require a suspect to put his assets in a blocked emigrant's account, which he could dispose of only with the approval of the *Devisenstelle*. Any legal transfers abroad could be made only from such blocked accounts via the *Deutsche Golddiskontbank*, the government bank through which foreign exchange transactions were made (the "*DeGo*"), at increasingly large discounts. In 1937 the discount charged by the *DeGo* exceeded 80%. This, then, was the environment in which the Leffmanns prepared for their flight from the Reich.

19. Another measure by which the Reich seized assets from fleeing Jews was the flight tax. Flight tax assessments were based on wealth tax declarations, which referred to wealth in the previous year and which were calculated at 25% of the value of the reported assets. Payment of the flight tax did not give the emigrant any right whatsoever to transfer abroad any of the remaining assets after payment of the tax. In fact, the flight tax amount typically would have been considerably higher than 25% of the assets actually owned at the time of emigration, as those who were persecuted by the Nazis -- as were the Leffmanns -- suffered dramatic financial losses in the period leading up to their emigration, so that their assets at the time of emigration would have been considerably smaller than those on which their flight tax was assessed. The payment of the flight tax was necessary to obtain the no-objection certification of the tax authorities, which in turn was necessary to obtain an exit permit. In the case of the Leffmanns, the flight tax was thus calculated at 25% of the assets they reported on their 1937 tax form, which would have included their total assets held in 1936. The Leffmanns paid this flight tax in the amount of 120,000 to 125,000 RM in cash.

20. While they would have preferred neutral Switzerland over Italy, where the Fascists were already in power and closer relations with Nazi Germany had begun to develop, at the time, a long-term stay in Switzerland would have been virtually impossible. Italy, as opposed to Switzerland, was one of the few European countries still allowing the immigration of German Jews, so that is where they went, hoping that Italy, with its significant Jewish population, would be a safe haven from the Nazi onslaught.

21. In light of the ever-tightening regulations governing the transfer of assets, emigrants sought alternative means of moving their funds abroad. One major avenue involved creating a triangular agreement whereby individuals who owned property outside the Reich and were in

need of RM would agree to exchange the currency for property, which they would then immediately liquidate upon arrival in the new country. This is exactly the type of transaction the Leffmanns took part in when, in December 1936, they purchased a house and factory in Italy for an inflated price of RM 180,000 from the heirs of Eugenio Usenhenz from Stuttgart and pre-agreed to sell the property back to a designated Italian purchaser for lire, at a considerable loss, upon their arrival in Italy a few months later.

22. In April 1937, the Leffmanns crossed the border into Italy, going first to Milan and then to Florence, where many other German Jewish refugees ended up, and where their newly acquired house and factory were located. Their hope, shared by other Jews emigrating from Austria and Germany to Italy, was that life there could go on in some form of normalcy, which it could not in Cologne.

23. Shortly after their arrival in Italy, as pre-agreed, the Leffmanns sold their newly-acquired properties to an Italian businessman named Gerolamo Valli, who was a business partner of the family from Stuttgart from whom they had originally purchased the house and factory. They sold the properties at a considerable loss -- for 456,500 Lira (or about 61,622 RM) -- and rented a home in Florence at Via Terme 29 and later at Via di San Vito 10.

24. But the Leffmanns' time in Italy was short-lived. It soon became clear that the nightmare from which they had fled was about to engulf them there as well. But moving on meant yet again losing a significant part of their remaining financial assets. The Leffmanns had already lost two-thirds of their initial RM investment in transfer costs, and they now stood to lose much of their remaining cash proceeds as the tight Italian foreign exchange restrictions forced them to seek conversion in "unofficial" ways. Paul was in his late sixties when they arrived in

Italy; Alice was six years his junior. They were living as refugees, unable to work in Italy, their prior lives destroyed by Nazi persecution, and on the run.

The Growing Influence of Nazi Germany on Mussolini and Italy

25. In April 1936, Italy and Germany had secretly adopted the Italo-German Police Agreement, which provided for the exchange of information, documents, evidence and identification materials by the police with regard to all emigrants characterized as “subversives,” which by definition included German Jews residing in Italy. Pursuant to this agreement, the Gestapo could compel the Italian police to interrogate, arrest and expel any German Jewish refugee.

26. By the fall of 1936 and into 1937, things had grown even bleaker for Jews. On November 1, 1936, Mussolini publicly announced the ratification of the Rome-Berlin Axis. By March 1937, Italian bookshops had begun to exhibit and openly sell the notorious book, The Protocols of the Elders of Zion, along with other anti-Semitic writings. During the summer and fall of 1937, the head of the Italian Police, Arturo Bocchini, and Mussolini accepted a proposal from the notorious SS General Reinhard Heydrich, the chief of the Security Service of the Reichsführer (the SS) and the German Secret State Police (the Gestapo), to assign a member of the German police to police headquarters in the ten largest Italian cities, including Florence, where the Leffmanns resided. This facilitated the Nazi efforts to check on “subversives,” that is, Jewish individuals.

27. By the fall of 1937, anti-Semitism in Italy, including in the highest levels of the Ministry of the Interior, dashed any illusions about a longer stay in Italy for the Leffmanns. That fall, Germany and Italy began to prepare for Hitler’s visit to Italy. In October, the Ministry of the Interior created lists of all German refugees residing in Italy’s various provinces. The lists were

intended to draw clear distinctions between “those who supported the Nazi regime” and “anti-Nazi refugees” or Jews. This was the first time that the Italian Government had explicitly associated all German Jews with anti-Nazi Germans. This marked a turning point in the 1936 Italo-German Police Agreement, with the Gestapo requesting these lists so that it could monitor “subversives” in anticipation of Hitler’s visit. From the beginning of January 1938 until Hitler’s visit in May, the Gestapo received a total of 599 lists from the police throughout Italy’s provinces.

Leffmann’s Sale of the Painting

28. As the situation grew increasingly desperate for Jews living in Italy, it became clear that it would only be a matter of time before the Fascist regime’s treatment of Jews would mimic that of Hitler’s Nazis. Paul and Alice had to make plans to leave, and this would require money. Switzerland was where they wanted to go to escape the horrors of Nazism and Fascism and find a truly safe haven. But, as was well known at the time, passage into Switzerland, permanent or temporary, did not come easily or cheaply. Given the urgency of their situation, Paul began to explore the possibility of selling his masterpiece, *The Actor*, with dealers in Paris. The events following the Austrian *Anschluss* and Hitler’s visit to Italy in May 1938 confirmed the correctness of his actions -- i.e., that they would have had no choice but to turn whatever assets they still controlled into cash.

29. Meanwhile, conditions for Jews in Italy only grew worse. On February 17, 1938, every newspaper in Italy published a Government announcement (“Diplomatic Notice Number 18,” issued on February 16), which stated that “[t]he Fascist Government reserves to itself the right to keep under close observation the activity of Jews newly arrived in our country.”

30. In March 1938, SS General Heydrich traveled to Rome to meet with the head of the Italian Police, Bocchini, in order to plan for Hitler's visit. Nazi police officials were posted at 13 Police Headquarters in border towns, ports and large cities to conduct interrogations and house searches. These officials, dressed in Nazi uniforms, arrived on April 10-11, 1938. Meanwhile, on March 18, 1938, the Italian Ministry of the Interior informed prefects in border provinces that "ex-Austrian Jewish subjects" should be denied entry into Italy.

31. Also in March 1938, the Italian Minister of Foreign Affairs informed the U.S. Ambassador to Italy that Italy would not be participating in the international initiative to "facilitate" the emigration of "political refugees" from Austria and Germany. Italian newspapers made clear that "political refugees" was a synonym for Jews.

32. In April 1938, in the face of the growing Nazi persecution spreading across Europe and into Italy, Paul escalated his efforts to liquidate The Actor.

33. In September of 1936, after he had been forced by the Nazis to part with nearly everything he owned, Leffmann had rejected an offer from the notorious art dealer, C.M. de Hauke of Jacques Seligmann & Co. (whom the U.S. State Department later identified as a trafficker in Nazi-looted art) to sell The Actor. Nearly two years later, on April 12, 1938, Leffmann, in an even more desperate state, reached out to de Hauke asking him if he would be interested in purchasing the Painting.

34. Just days after writing to de Hauke, the situation in Italy grew even worse. From April 24-26, General Heydrich, SS Reichsführer Heinrich Himmler (whom Hitler later entrusted with the planning and implementation of the "Final Solution") and SS General Josef "Sepp" Dietrich, the commander of Hitler's Leibstandarte (Hitler's personal army), went to Rome to complete preparations for Hitler's visit. For three weeks in April and May 1938 there were over

120 Gestapo and SS officers in Italy -- primarily in Florence, Rome and Naples. The Gestapo officials and Italian police continued investigations and surveillance of "suspicious persons" until the end of Hitler's visit, arresting at least 80 people in Florence. The arrests were carried out by the Italian police. Many German Jewish residents fled in anticipation, and as a result, of these arrests.

35. On May 3, Adolf Hitler arrived in Italy for his official state visit. It was a momentous occasion for Mussolini, and the Italian people turned out in the tens of thousands to greet the German leader. From May 3 through May 9, 1938, Hitler traveled to Rome, Naples and Florence. This was no typical state visit. Mussolini, anxious to strengthen the Axis alliance, made sure that Italy spared no expense in putting on its grandest show for Hitler. The streets of these Italian cities were covered in thousands of Nazi swastika flags, which flew alongside Italy's tricolor; flowerbeds were decorated in the shape of swastikas and photographs of Mussolini and Hitler were made into postcards and displayed in shop windows. Parades and military displays in honor of Hitler, attended by thousands of Italians, young and old, took place in every city he visited. In Florence, the last city visited by Hitler on May 9th, city officials made an official postmark that commemorated Hitler's visit. Mail sent during that time was stamped "1938 Il Führer a Firenze" and decorated with swastikas.

36. Hitler's visit made clear that the situation in Italy for Jews was tense and the fear palpable. For Leffmann, the time to flee Italy was quickly approaching, so he continued to try to sell the Painting through de Hauke. Trying to raise as much cash as possible for the flight and whatever the future would bring, Leffmann responded to a letter from de Hauke, telling him that he had already rejected an offer obtained through another Paris dealer (presumably Käte Perls)

for U.S. \$12,000 (net of commission). It is clear from the letter that Leffmann was desperately trying to improve his leverage to maximize the amount of hard currency he could raise.

37. Violence was increasing and the persecution of Jews was on the rise. All foreign Jews in Italy risked arrest, and had good reason to fear possible deportation and death. Paul and Alice were in fear of their liberty and their lives. There was no time left. So just days after telling de Hauke that he had rejected Mrs. Perls' low offer, in late June 1938, Leffmann sold the Painting at the very price he told Perls and de Hauke he would not consider. He finally accepted Käte Perls' offer of U.S. \$13,200 (U.S. \$12,000 after a standard 10% selling commission), who was acting on behalf of her ex-husband, Hugo Perls, also an art dealer, and art dealer Paul Rosenberg, with whom Perls was buying the Painting.

38. On July 26, 1938, Frank Perls, Käte's son, who was also a dealer, wrote to automobile titan Walter P. Chrysler Jr., asking if he would be interested in purchasing The Actor. Obviously aware of the "sensitivity" of his overture, having just acquired a Picasso masterpiece from a German Jew on the run from Nazi Germany living in Fascist Italy for a low price that reflected the seller's desperate circumstances and the extraordinary prevailing conditions, he described the work as having been purchased by Mrs. Perls from "an Italian collector" -- an outright lie.

39. In July 1938, the Leffmanns, as German Jews, submitted their "Directory of Jewish Assets" forms detailing all of their assets, which the Reich required all Jews (even those living abroad) to complete. The penalties for failing to comply with this requirement included "fines, incarceration, prison, seizure of assets."

40. Meanwhile, the plight of the Jews in Italy deteriorated even further. In August 1938, enrollment of foreign Jews in Italian schools was prohibited. A Jewish census, in which the

Leffmanns were forced to participate, was conducted in preparation for the Italian racial laws, which were soon to follow. A legal definition of what constituted a “Jew” was considered, and discriminatory legislation was drafted. The Italian government increased surveillance of Jews because of the fear that Jews would transfer their assets out of Italy or emigrate and take their assets with them. A series of anti-Semitic publications were released, among them the infamous “*Manifesto degli scienziati razzisti*” (“Manifesto of the Racial Scientists”), which attempted to provide a scientific justification for the coming racial laws, and the venomous magazine, “*La difesa della razza*” (“The Defense of the Race”). In addition, a number of regional newspapers published lists of many of the names of Jewish families residing in Florence.

41. On September 7, 1938, the first anti-Semitic racial laws were introduced in Italy, including “Royal Enforceable Decree Number 1381,” which was approved by the Council of Ministers on September 1st and was published in daily newspapers on September 2nd. It was signed by the King on September 7th and was published in the “*Gazzetta Ufficiale*” on September 12th. With this Enforceable Decree, all “alien Jews” were forbidden from residing in Italy. All Jews who arrived in Italy after January 1, 1919 had to leave Italy within six months (i.e., by March 12, 1939) or face forcible expulsion. Bank accounts opened in Italy by foreign Jews were immediately blocked. At that point in 1938, Italy’s anti-Jewish measures had become extremely draconian, and in some instances had become even harsher than the corresponding measures enacted in Germany.

42. The Leffmanns had no choice but to prepare for immediate departure. Paul had sold The Actor not a moment too soon. Switzerland was the obvious destination. But Switzerland, which already had strict border controls, became even more difficult to enter beginning in 1938. In fact, it was about the worst time to try to enter Switzerland. Switzerland, following the

incorporation of Austria into the Reich, imposed visa requirements on holders of Austrian passports on March 28, 1938, and in April began negotiations with the Germans regarding the introduction of the notorious “J” stamp. On August 18-19, 1938 the Swiss decided to reject all refugees without a visa; on October 4, 1938, with an agreement reached on the adoption of the “J” stamp, they imposed visa requirements on German “non-Aryans.” Receiving asylum was virtually impossible, and German and Austrian Jews could only enter Switzerland with a temporary residence permit which, given the strict controls, and asset requirements imposed by the Swiss government, was not easy to obtain.

43. Sometime before September 10, 1938, however, the Leffmanns managed to obtain a *Toleranzbewilligung* (a tolerance or temporary residence visa) from Switzerland, valid from September 10, 1938 to September 10, 1941. In October 1938, just days after the enactment of the racial laws expelling them from Italy, the Leffmanns fled yet again, this time to Switzerland, where they were allowed to stay only temporarily.

44. By the time the Leffmanns arrived in Switzerland, the *Anschluss* and other persecutory events had triggered a rising wave of flight from the Reich. Consequently, Swiss authorities required emigrants to pay substantial sums through a complex system of taxes and “deposits” (of which the emigrant had no expectation of recovery).

45. In October 1938, all German Jews were required to obtain a new passport issued by the German government stamped with the letter “J” for Jude, which definitively identified them as being Jewish. As German citizens who required a passport to continue their flight, the Leffmanns had no choice but to comply.

46. The Leffmanns temporarily resided in Bern, Switzerland, but, unable to stay, prepared to flee yet again, this time to Brazil. In addition to bribes that were typically required to

obtain necessary documentation, Brazil would only provide visas for Jews who could transfer more than 400 contos (USD \$20,000) to the Banco do Brasil. On May 7, 1941, the Leffmanns, still on the run, immigrated to Rio de Janeiro, Brazil, where they lived for the next six years. But even in Brazil, they could not escape the effects of the ongoing war. All German residents living there, including the Leffmanns, were forced to pay a levy imposed by the Brazilian government of 20,000 Swiss Francs (or about U.S. \$4,641).

47. Given the various payments required by Switzerland, as well as those that the Leffmanns would need to enter Brazil, the Leffmanns depended on the \$12,000 (or approximately SF 52,440 in 1938) they received from the sale of The Actor, as it constituted the majority of the Leffmanns' available resources in June 1938. Had the Leffmanns not fled for Brazil when they did, they would have likely suffered a much more tragic fate at the hands of the Nazis regime and its allies.

48. The Leffmanns were not able to return to Europe until after the War had ended. In 1947 they settled in Zurich, Switzerland.

49. Paul Leffmann died on May 4, 1956 in Zurich, Switzerland at the age of 86. He left his entire estate to his wife, Alice Brandenstein Leffmann.

50. Alice Leffmann died on June 25, 1966 in Zurich, Switzerland at the age of 88. She left her entire estate to 12 heirs (all relatives or friends).

The Ancillary Estate of Alice Leffmann

51. In or about August 26, 2010, Nicholas John Day, the Executor named in the will of Alice Anna Berta Brandenstein, a legatee named in the will of Alice Leffmann, submitted a Petition for Ancillary Probate for the estate of Alice Leffmann in the Surrogate's Court of the State of New York, New York County authorizing Laurel Zuckerman to receive Ancillary

Letters of Administration CTA of the estate. On October 18, 2010, Laurel Zuckerman received Ancillary Letters of Administration CTA and was named Ancillary Administratrix by the Surrogate's Court of the State of New York, New York County.

The Museum's Acquisition and Possession of the Painting

52. The immediate history of the Painting after it was purchased by Perls and Rosenberg in June of 1938 is unclear, but it is known that after the purchase, the Painting was loaned by art dealer Paul Rosenberg to the Museum of Modern Art ("MoMA") in New York in 1939. In the paperwork documenting the loan, Rosenberg requested that MoMA insure the Painting for \$18,000 (a difference of \$6,000 or a 50% increase over what had been paid to Leffmann less than a year earlier).

53. Sometime prior to October 28, 1940, the Painting was consigned for sale by Rosenberg to the well-known M. Knoedler & Co. Gallery in New York, New York. On November 14, 1941, M. Knoedler & Co. sold the Painting to Thelma Chrysler Foy for \$22,500 (a difference of U.S. \$9,300 or a 70% increase from the price paid to Leffmann).

54. Thelma Chrysler Foy donated the Painting to the Museum in 1952, where it remains today. The Museum accepted this donation.

55. As a matter of law and public policy, good title to the Painting never passed from Leffmann to Perls and Rosenberg, and thus neither Perls, Rosenberg nor Foy could convey good title to the Painting. Therefore, the Museum never acquired good title to the Painting, and it remains the property of the Leffmann estate.

56. The Museum, given its resources, relationships, expertise, and status as a museum that holds its collection in the public trust, should have discovered, through due diligence,

Leffmann's ownership up and until 1938, and the circumstances under which he was compelled to dispose of the Painting because of Nazi and Fascist persecution.

57. Nonetheless, the Museum's published provenance for the Painting was manifestly erroneous when it first appeared in the Museum's catalogue of French Paintings in 1967. Instead of saying that Leffmann owned the Painting from 1912 until 1938, it read as follows: "P. Leffmann, Cologne (in 1912); a German private collection (until 1938) . . .", thus indicating that Leffmann no longer owned the Painting in the years leading up to its sale in 1938.

58. This remained the official Museum provenance for the Painting for the next 45 years, including when it was included on the Museum's website as part of the "Provenance Research Project," which is a section of the website that includes all artworks in the Museum's collection that have an incomplete Nazi-era provenance.

59. From 1967 to 2010, the provenance listing was changed numerous times. It continued to state, however, that the Painting was part of a German private collection, and not that it was owned by Leffmann continuously from 1912 until 1938.

60. In connection with a major exhibition of the Museum's Picasso holdings in 2010 entitled, "Picasso in the Metropolitan Museum of Art", the provenance was changed yet again. The forward to the exhibition catalogue by the Museum's director, Thomas P. Campbell, states that "[m]ore than a dozen members of our curatorial and conservation staff devoted the last year to an intensive study of the Museum's works by Picasso. . . Thanks to these extensive studies, for example, we have been able to confirm the authorship of one painting and to better establish the early ownership and exhibition history of many other works." Picasso in the Metropolitan Museum of Art, The Metropolitan Museum of Art, New York, 2010, p. vii.

61. Despite purportedly careful examination, as of 2010, the provenance of the Painting continued to erroneously list the “private collection” subsequent to the Leffmann listing.

62. All of these versions of the Painting’s provenance were incorrect. Paul owned the Painting from 1912 until its “sale” under duress to Perls in June 1938. The Museum’s asserted explanation for the forty-five years of erroneous provenance only underscores its improper conduct when it first acquired the Painting. The Museum asserts that the genesis of the original provenance entry in 1967 was that, some fifteen years after acquiring the Painting, the Museum’s curators finally asked Perls where he had obtained the Painting and that his answer was that he had bought it in 1938 from a “German professor” in Solothurn, Switzerland who had been “thrown out by Nazis.” (Perls allegedly could not remember the name of the German collector when asked in the 1960’s.) Therefore, at least at the time of the cataloguing, red flags should have been raised for the Museum. It should have tried to correct its error by then investigating the acquisition of the Painting, especially because Perls already said that he could not remember the name of the German collector and, more pointedly, that the seller had been “thrown out” of Germany by the Nazis. But obviously no investigation was conducted in 1967, and the provenance published in 1967, and for many years thereafter, was erroneous.

63. In October 2011, only after extensive correspondence with Plaintiff, the Museum revised its provenance yet again. The revised provenance omitted the reference to the mysterious private German collector who had purportedly owned The Actor from 1913-1938 and finally acknowledged Leffmann’s ownership through 1938 and his transfer of it during the Nazi era.

64. The Museum’s conduct ignored directives and warnings issued by the U.S. Government. The Museum had specifically been warned about accepting or buying art misappropriated during the Nazi era. As early as 1945, the American Commission for the

Protection and Salvage of Artistic and Historic Monuments in War Areas (also known as the “Roberts Commission”) issued a circular, addressed “to museums, art and antique dealers and auction houses,” which emphasized the importance of bringing “specific examples of looting of works of art or cultural material [] to light as soon as possible,” and which encouraged museums and others to inform the Roberts Commission of objects of “special artistic importance” that had “obscure or suspicious” provenances. The Commission also issued the following statement: “[i]t is, of course, obvious that no clear title can be passed on objects that have been looted from public or private collections abroad.” In or about 1947, the Department of State sent American museums, as well as universities, libraries, art dealers and book sellers, another bulletin, in which it highlighted the responsibility of museums and other American institutions to exercise “continued vigilance” in identifying cultural objects with provenances tainted by World War II. The directive underscored the need for museums to notify the Secretary of State of any objects identified as lacking a clear title. In 1950, the College Art Association of America reprinted the directive in *College Art Journal*, and in 1951, the American Federation of Arts reprinted the directive again in *Magazine of Art*.

65. The Museum’s conduct was also inconsistent with the principles espoused by the American Alliance of Museums (“AAM”), by which the Museum is accredited, and the Association of Art Museum Directors (“AAMD”), to which the Museum is a member — principles closely correlated to the landmark *Washington Conference Principles on Nazi-Appropriated Art*. For example, recognizing that a museum’s mission is to serve the public and that its responsibility to practice ethical stewardship is paramount, AAM’s “Standards Regarding Unlawful Appropriation of Objects During the Nazi Era” dictates that museums: (i) identify all objects in their collections that were created before 1946 and acquired by the museum after 1932,

that underwent a change of ownership between 1932 and 1946, and that were or might reasonably be thought to have been in continental Europe during those dates; (ii) make currently available object and provenance (history of ownership) information on those objects accessible; and (iii) give priority to continuing research as resources allow.

Plaintiff Demands the Return of the Painting and the Museum Refuses

66. On September 8, 2010, Plaintiff's attorneys, Herrick, Feinstein LLP, wrote to the General Counsel of the Museum, demanding the return of the Painting, but the Museum failed and refused to deliver the Painting to Plaintiff. The Painting remains in the possession of the Defendant through the filing of this Complaint.

67. On February 7, 2011, the parties entered into a standstill agreement tolling any statute of limitations as of February 7, 2011. Such agreement was thereafter amended several times to terminate on September 30, 2016. The final amendment of the standstill agreement terminated on September 30, 2016. The action is therefore timely.

FIRST CLAIM

(For Replevin)

68. Plaintiff repeats and realleges each of the allegations contained in the preceding paragraphs of this Complaint as if fully set forth herein.

69. The Leffmann estate is the rightful owner of the Painting, and Plaintiff, as Ancillary Administratrix of the Leffmann estate, is thus entitled to recover sole possession of the Painting.

70. The Painting is a unique and irreplaceable work of art.

71. Plaintiff demanded the return of the Painting. Defendant failed and refused to deliver the Painting to Plaintiff.

72. Plaintiff is entitled to the immediate return of the Painting.

SECOND CLAIM

(For Conversion)

73. Plaintiff repeats and realleges each of the allegations contained in the preceding paragraphs of this Complaint as if fully set forth herein.

74. The Leffmann estate is the rightful owner of the Painting, and Plaintiff, as Ancillary Administratrix of the Leffmann estate, is thus entitled to recover sole possession of the Painting.

75. Plaintiff demanded the return of the Painting. Defendant failed and refused to deliver the Painting to Plaintiff.

76. In refusing to return the Painting when demanded, Defendant converted and appropriated the Painting for its own use in complete disregard and derogation of the Leffmann estate's rights, title and interest to the Painting.

77. As a result of Defendant's wrongful conduct, the Leffmann estate has suffered damages, and Plaintiff is entitled to an award, in an amount to be determined at trial, but estimated to be in excess of \$100 million.

THIRD CLAIM

(For Declaratory Judgment)

78. Plaintiff repeats and realleges each of the allegations contained in the preceding paragraphs of this Complaint as if fully set forth herein.

79. The Leffmann estate is the rightful owner of the Painting, and Plaintiff, as Ancillary Administratrix of the Leffmann estate, is thus entitled to the immediate possession of the Painting.

80. Defendant does not have good title to the Painting.

81. Plaintiff demanded the return of the Painting. Defendant failed and refused to deliver the Painting to Plaintiff.

82. Plaintiff is entitled to a judgment declaring that the Leffmann estate is the sole owner of the Painting.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendant as follows:

- a) On the First Claim, directing that Defendant immediately deliver the Painting to Plaintiff;
- b) On the Second Claim, in the alternative, awarding Plaintiff damages in an amount to be proven at trial, but estimated to be in excess of \$100 million;
- c) On the Third Claim, declaring that the Leffmann estate is the rightful owner of the Painting and that Plaintiff, as Ancillary Administratrix of the Leffmann estate, is entitled to immediate possession of the Painting;
- d) Awarding Plaintiff fees and costs pursuant to Fed. R. Civ. P. 54(d); and
- e) Awarding any such other and further relief as the Court deems just and proper.

Dated: New York, New York
November 2, 2016

Respectfully submitted,

HERRICK, FEINSTEIN LLP

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Attorneys for Plaintiff
Laurel Zuckerman, Ancillary Administratrix
of the estate of Alice Leffmann

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----	x
LAUREL ZUCKERMAN, AS ANCILLARY	:
ADMINISTRATRIX OF THE ESTATE OF	:
ALICE LEFFMANN,	:
	: 16 CIV 07665 (LAP)
Plaintiff,	:
	:
vs.	:
	:
THE METROPOLITAN MUSEUM OF ART,	:
	:
Defendant.	:
-----	x

NOTICE OF MOTION TO DISMISS THE AMENDED COMPLAINT

PLEASE TAKE NOTICE that, upon the accompanying Memorandum of Law and the declaration and exhibit thereto, Defendant The Metropolitan Museum of Art will move this Court, before the Honorable Loretta A. Preska, United States District Judge, for an order dismissing the Amended Complaint with prejudice in its entirety against Defendant, pursuant to Federal Rules of Civil Procedure 12(b)(6), or, alternatively, an order dismissing the Amended Complaint without prejudice or staying the case pending the New York Surrogate's resolution of the issues relating to Plaintiff's capacity and standing to represent the Estate of Alice Leffmann, pursuant to Federal Rules of Civil Procedure 9(a)(2), 12(b)(1) & (6), and 17(b)(3). Defendant requests that oral argument be heard on this motion.

Dated: New York, New York
November 30, 2016

Respectfully submitted,

/s/ David W. Bowker
David W. Bowker

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*Attorneys for Defendant The Metropolitan
Museum of Art*

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----	X
LAUREL ZUCKERMAN, AS ANCILLARY	:
ADMINISTRATRIX OF THE ESTATE OF	:
ALICE LEFFMANN,	:
	: 16 CIV 07665 (LAP)
Plaintiff,	:
	: (Oral Argument Requested)
vs.	:
	:
THE METROPOLITAN MUSEUM OF ART,	:
	:
Defendant.	:
	:
-----	X

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT THE METROPOLITAN
MUSEUM OF ART'S MOTION TO DISMISS THE AMENDED COMPLAINT**

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INTRODUCTION

The Metropolitan Museum of Art (the “Museum”) has owned and exhibited for the public to enjoy Pablo Picasso’s *The Actor* (the “Painting”) for nearly 65 years. The Museum acquired the Painting in 1952 as a gift from Thelma Chrysler Foy, a New York collector. Foy had purchased it for value eleven years earlier, in 1941, through a New York gallery, who had it from dealer Paul Rosenberg. Three years before that, Rosenberg and collector Hugo Perls had purchased it for value through another art dealer on the open market in Paris from a German-Jewish collector named Paul Leffmann (“Leffmann”). At the time Leffmann sold the Painting in June 1938 (the “1938 Sale”), he was living in Italy with his wife, Alice Leffmann (together, the “Leffmanns”); and the Painting was in Switzerland, in the care of art historian Heribert Reiners. The Leffmanns had left Germany roughly a year earlier, in April 1937, after witnessing the rise of the Nazi regime and suffering losses—in the wake of the Nuremberg Laws—from the sales of their manufacturing business, investment properties, and home in Germany in 1935 and 1936. Amended Complaint (“AC”) ¶¶ 12-13, 16.

Plaintiff Laurel Zuckerman (“Plaintiff”) is the great-grandniece of the Leffmanns. She claims that they were the victims of Nazi duress, not only when their properties were “Aryanized” in Nazi Germany 1935 and 1936, but also when they sold the Painting on the open market in Paris in 1938, after they had already left Germany and resettled in Italy. Given the historical context of the 1938 Sale, the Museum has, with great care, sought to understand the facts underlying Plaintiff’s 2010 demand for the return of the Painting. As part of the Museum’s commitment to handle Nazi-era claims in accordance with the principles and guidelines established by the Association of American Museums (“AAM”) and the Association of American Museum Directors (“AAMD”), the Museum undertook extensive research in response

to Plaintiff's pre-litigation inquiries and demands. The Museum voluntarily shared with Plaintiff the full universe of relevant documents and information it collected in the course of an exhaustive, multi-year investigation into the facts and circumstances surrounding the Painting and the 1938 Sale. The Museum ultimately concluded that the 1938 sale was not an "illegal confiscation" or "unlawful appropriation" (the AAMD and AAM standards for restitution), and now defends that conclusion and presents a range of threshold defenses requiring dismissal of this suit. While the Museum had the benefit of its voluminous research to reach this conclusion, only some of which is reflected in the Amended Complaint,¹ the Museum accepts as truthful—as it must for purposes of this motion—Plaintiff's allegations of fact, and respectfully submits that Plaintiff's claims fail as a matter of law for the following reasons, any one of which standing alone requires dismissal:

First, Plaintiff lacks capacity and standing to bring this suit because she was not named as a beneficiary in Alice Leffmann's will and she has not been properly appointed to represent the Estate. Plaintiff contends that New York Surrogate's Court appointed her the Ancillary Administratrix of the Estate, but—as the Museum has argued in a petition filed in Surrogate's Court—that appointment was defective because, *inter alia*, the Surrogate's Court failed to secure renunciations from those who had priority rights to serve as the administrator and Plaintiff failed to obtain the required consent from the Estate's beneficiaries for her appointment. *See infra*, Section I (pp. 7-9). This case should be dismissed without prejudice under Rules 12(b)(1) and (6), or stayed or suspended pending the Surrogate's Court's resolution of the Museum's petition.

¹ It is apparent on the face of the Amended Complaint that Plaintiff has relied upon documents from the pre-litigation investigation, but omitted key facts from her pleading. The Court could consider such information when determining the sufficiency of claims for Rule 12(b)(6) purposes, *see Brass v. American Film Technologies, Inc.*, 987 F.2d 142, 150 (2d Cir. 1993), but it need not do so here because this Motion does not incorporate or rely upon this information as a basis for dismissal.

Second, even assuming Plaintiff had standing (which she does not) dismissal still would be required under Rule 12(b)(6) because Plaintiff has failed to adequately plead duress. A party claiming duress must plead (1) a wrongful threat that (2) precluded the exercise of the victim's free will and (3) left the victim no option but to enter the contract. Plaintiff fails to plead any of these elements. She fails to plead a wrongful threat—from either the buyers of the Painting, or from the Fascists—that is connected to the 1938 Sale. Moreover, she fails to plead that Leffmann was precluded from exercising his free will or was left with no alternative but to sell the Painting. Instead, she alleges that Leffmann made his own decision to offer the Painting for sale on the international art market, freely negotiated with multiple parties for months or even years prior to the 1938 Sale, employed tactics to “improve his leverage to maximize the amount of hard currency he could raise,” rejected at least two offers from other art dealers, and “finally accepted” the offer from Rosenberg and Perls—without any involvement by the Nazis or Fascists—apparently because it matched or exceeded every other offer Leffmann received for the Painting. AC ¶¶ 33, 36-37. Such allegations are insufficient to plead duress; and to the extent Plaintiff asks the Court to create a novel theory of duress law that encompasses these allegations, that theory is unsupported and unbounded. *See infra*, Section II (at pp. 9-13).

Third, even assuming that Plaintiff has adequately pleaded duress (which she has not) the Amended Complaint still would fail to state a claim under Rule 12(b)(6) because the allegations demonstrate that Leffmann never repudiated, and instead ratified, the 1938 Sale. A victim of duress must repudiate the contract within a reasonable period of time after the duress subsides. If the victim fails to do so and instead accepts the benefits of the contract, or remains silent and acquiesces in it, the victim will be deemed to have ratified the contract and will be bound by it. Here, Plaintiff concedes that Leffmann and his wife survived the Nazi era and lived until 1956

and 1966, respectively (AC ¶¶ 49-50), yet there is no allegation that either of them ever repudiated the 1938 Sale or brought a claim for the Painting. To the contrary, Plaintiff concedes that Leffmann accepted the benefits of the contract by receiving and retaining the proceeds of the 1938 Sale. AC ¶ 47. Such allegations establish that Leffmann ratified the 1938 Sale and thus are fatal to Plaintiff's claims. *See infra*, Section III (at pp. 13-16).

Fourth, even assuming that the 1938 Sale had been voidable for duress (which it was not), and even assuming that it was not subsequently ratified by Leffmann (which it was), good title nonetheless passed to Foy when she purchased the Painting in good faith from Rosenberg on the open market in New York in 1941. AC ¶ 53. As a good-faith purchaser, Foy acquired good title to the Painting at that time. When she later donated the Painting to the Museum in 1952, good title passed to the Museum. The good-faith purchaser defense is independently fatal to Plaintiff's claims under Rule 12(b)(6). *See infra*, Section IV (at pp. 16-17).

Fifth, Plaintiff's claims also fail because they are time-barred in New York by the statute of limitations and laches. *See infra*, Section V (at pp. 17-20). In addition to a dismissal on these time-based defenses, the Museum respectfully requests a dismissal on any or all of the merits-based grounds. The Museum makes this request in the spirit of the AAM and AAMD guidelines, which encourage resolution of Nazi-era claims on the merits.

STATEMENT OF ALLEGED FACTS²

A. The Leffmanns In Germany And Italy

Leffmann was a "prosperous industrialist and investor" who lived in Cologne, Germany with his wife, Alice. AC ¶¶ 2, 10. The Leffmanns acquired the Painting in 1912. AC ¶ 9. In addition, they owned "sizeable assets," including a leading manufacturing company, real estate

² The Museum accepts Plaintiff's allegations of fact as true only for purposes of this Motion. For all other purposes, the Museum reserves the right to contest the allegations.

investments and their home. AC ¶ 10. In 1935-1936, after the Nazis enacted the Nuremberg Laws and began to exclude Jews from Germany's economic and social life, the Leffmanns were forced to sell much of their property to Aryan corporations or individuals. AC ¶ 13. The Leffmanns fled Germany and resettled in Italy in April 1937. AC ¶¶ 16, 22. Before leaving Germany, the Leffmanns found "alternative means of moving their funds abroad," including a "major avenue" that allowed them in December 1936 to purchase a house and factory in Florence, Italy, for RM 180,000. AC ¶ 21. After moving to Italy in April 1937, they sold their Italian house and factory—allegedly for 456,500 Lira (or about 61,622 RM) in cash—and rented a home in Florence. AC ¶ 23. They were unable to work during their time in Italy. AC ¶ 24.

B. Leffmann's 1938 Sale Of The Painting To Rosenberg And Perls

Soon after moving to Florence, Leffmann "began to explore the possibility of selling" the Painting "with dealers in Paris." AC ¶ 28. Previously, in 1936, he had declined an offer to sell the painting to French art dealer C.M. de Hauke. AC ¶ 33. "In April 1938, in the face of the growing Nazi persecution spreading across Europe and into Italy, [Leffmann] escalated his efforts to liquidate [the Painting]." AC ¶ 32. On April 12, 1938, he "reached out to de Hauke asking him if he would be interested in purchasing the Painting." AC ¶ 33. In May 1938, Leffmann "continued to try to sell the Painting" in an effort to "raise as much cash as possible for the flight and whatever the future would bring." AC ¶ 36. Leffmann wrote to de Hauke that he "had already rejected an offer obtained through another Paris dealer" for "\$12,000 (net of commission)"; Leffmann was "trying to improve his leverage to maximize the amount of hard currency he could raise." *Id.* Prior to and at the time of the 1938 Sale, the Painting was with Professor Reiners in Switzerland where it was "saved from Nazi confiscation." AC ¶ 14.

In June 1938, Leffmann “finally accepted” an offer of \$13,200 for the Painting; the offer came through Käthe Perls, a German-Jewish émigré and Paris dealer who allegedly was acting on behalf of her ex-husband Hugo Perls, also a German-Jewish émigré, and Paul Rosenberg, a French-Jewish dealer—who bought the Painting together. AC ¶¶ 36-37. The \$13,200 sales price matched or exceeded the highest previous offer Leffmann had received for the Painting. *Id.* The Leffmanns received and retained the proceeds of the 1938 Sale, and continued to live in Italy until they moved to Switzerland in October 1938. AC ¶¶ 43, 47.

C. Rosenberg’s Sale Of The Painting To Foy In 1941

In 1939, Rosenberg loaned the Painting to the Museum of Modern Art, in New York, and soon thereafter he offered it for sale in New York by placing it on consignment with M. Knoedler & Co. Gallery. AC ¶¶ 52-53. In 1941, Thelma Chrysler Foy purchased the Painting from Rosenberg, through the Knoedler gallery, for \$22,500. AC ¶ 53.

D. Foy’s Donation Of The Painting To The Museum In 1952

Foy donated the Painting to the Museum in 1952, where it has remained ever since. AC ¶ 54. The Museum first published the provenance of the Painting in 1967; it listed the owners as “P. Leffmann, Cologne (in 1912); a German private collection (until 1938).” AC ¶ 57. Before publishing this provenance, the Museum interviewed Hugo Perls, who recalled purchasing the Painting in 1938 from a “German professor” in Switzerland (AC ¶ 62), apparently referring to Professor Reiners, the German friend who had custody of the Painting in Switzerland (AC ¶ 14). This may explain how “German private collection (until 1938)” became part of the provenance. AC ¶ 62. After the Museum learned that Leffmann had owned the Painting until 1938, it revised the provenance. AC ¶ 63.

E. The Leffmanns After The 1938 Sale

For four months after selling the Painting, the Leffmanns continued to live in Italy until they relocated to Bern, Switzerland in October 1938. AC ¶¶ 43, 46. The Leffmanns obtained temporary Swiss residence permits and apparently had assets sufficient to satisfy strict “asset requirements” in Switzerland. AC ¶ 42. In addition, Swiss authorities “required emigrants to pay substantial sums through a complex system of taxes and ‘deposits’.” AC ¶ 44.

After living in Switzerland for three years, the Leffmanns moved to Brazil for the duration of the War. AC ¶¶ 46-48. The Leffmanns apparently had the cash and other assets necessary to relocate to Brazil, pay the “bribes that were typically required to obtain necessary documentation,” deposit at least U.S. \$20,000 in the Banco do Brasil, “pay a levy” of \$4,641 imposed by the Brazilian government, and live in Brazil for six years. *Id.* In 1947, the Leffmanns relocated again to Zurich, Switzerland (AC ¶ 48), where they lived for the rest of their lives: Paul Leffmann died in 1956 (AC ¶ 49), leaving Alice as his sole beneficiary (AC ¶ 1); Alice died in 1966 (AC ¶ 50), leaving the bulk of her Estate to 12 residuary beneficiaries.

F. The Plaintiff And The Claim

Plaintiff is the Leffmanns’ great-grandniece. She is not a beneficiary of the Estate, but claims to be its Ancillary Administratrix. AC ¶¶ 1, 4. Her Amended Complaint asserts claims for conversion and replevin, on the theory that the 1938 Sale was made under duress.

ARGUMENT

I. Plaintiff Lacks Capacity And Standing To Bring This Suit

This suit should be dismissed because Plaintiff lacks the capacity and standing to bring it. She is not an heir or beneficiary of the Estate; her purported standing to bring this suit relies entirely on a 2010 decree (“Decree”) of the New York County Surrogate’s Court that admits Alice Leffmann’s will to ancillary probate and appoints Plaintiff as the Estate’s Ancillary

Administratrix.³ But that Decree was defective for numerous reasons and the Museum has filed a Surrogate's Court petition seeking to vacate it. *See* Bowker Decl. Exh. 1.

First, Plaintiff failed to comply with the Surrogate's Court Procedure Act's ("SCPA") mandatory order of priority for appointing an ancillary administrator. Before a non-beneficiary like Plaintiff can be appointed, SCPA Section 1604 requires the Surrogate's Court to ensure that the originally-appointed executor of the Estate (*i.e.*, UBS bank, a successor to the Leffnuans' Swiss bank), and all of the Estate beneficiaries (known as the "community of heirs" under Swiss law) are notified and given an opportunity to accept appointment as ancillary fiduciary of the estate, or to renounce that role. In this case, UBS allegedly was notified, but there is no allegation or showing that it properly renounced any role as required by the SCPA. Under the SCPA, next in line after UBS was the community of heirs, and there was no allegation or showing that they renounced any such role, either. Second, even if the proper order had been followed (which it was not), a non-beneficiary cannot be appointed under the SCPA unless all beneficiaries have been duly notified and have filed signed letters of consent with the Surrogate's Court. No such consent has been filed here. In the absence of such consent, the Public Administrator, who is next in the order of statutory priority, should have been—but was not—given the opportunity to accept appointment as ancillary fiduciary. These defects deprived the Surrogate's Court of jurisdiction to enter the Decree. *See* Bowker Decl. Exh. 1.

Under these circumstances, the Surrogate's Court must vacate the Decree, which would deprive Plaintiff of the capacity and standing to bring this lawsuit. A plaintiff seeking replevin of a decedent's property "is required to establish [inter alia] that ... she is the duly appointed

³ Although Plaintiff's grandfather was one of 12 beneficiaries, and he allegedly left his share of the Estate to a trust for the benefit of Plaintiff's father, there is no allegation that Plaintiff's father has ever transferred to Plaintiff an interest in the Estate. *See* Bowker Decl. Exh. 1, ¶¶ 45, 53.

representative of the decedent's estate." *Matter of Peters v. Sotheby's Inc.*, 821 N.Y.S.2d 61, 65 (App. Div. 2006). If she cannot do so, she lacks standing and capacity to bring suit on behalf of an estate. *See e.g., Schoeps v. Andrew Lloyd Webber Art Found.*, 851 N.Y.S.2d 74 (Sup. Ct. 2007), *aff'd* 884 N.Y.S.2d 396 (App. Div. 2009). *See also* Fed. R. Civ. P. 9(a)(2), 12(b)(1) & (6), 17(b)(3). Because Plaintiff's standing and capacity in this action rely upon the Decree, and because the Museum has sought to vacate that Decree in Surrogate's Court, this Court should dismiss this action without prejudice or, alternatively, stay or suspend this action pending the Surrogate's Court's resolution of the dispute over Plaintiff's appointment. *See* SCPA 701(3) ("No court except the court which issues letters shall have power to suspend, modify or revoke them..."); *Lefkowitz v. Bank of N.Y.*, 528 F.3d 102, 105 (2d Cir. 2007) (under the "probate exception ... 'probate matters' are excepted from the scope of federal diversity jurisdiction") (citation omitted); *see also Stolz v. New York Cent. R. Co.*, 164 N.E.2d 849, 852 (N.Y. 1959).⁴

II. Plaintiff Fails To Adequately Allege Duress And Therefore Dismissal Is Required Under Rule 12(b)(6)

"To void a contract on the ground of economic duress, the complaining party must show that its agreement was procured by means of (1) a wrongful threat that (2) precluded the exercise of its free will," *Interpharm, Inc. v. Wells Fargo Bank, N.A.*, 655 F.3d 136, 142 (2d Cir. 2011) (citing *Stewart M. Muller Constr. Co. v. N.Y. Tel. Co.*, 359 N.E.2d 328, 390 (N.Y. 1976)), and (3) "permitted no other alternative," *Kamerman v. Steinberg*, 891 F.2d 424, 431 (2d Cir. 1989); *Bethlehem Steel Corp. v. Solow*, 405 N.Y.S.2d 80, 80 (App. Div. 1978) ("Duress, in order to

⁴ *Accord Windbourne v. E. Air Lines, Inc.*, 479 F. Supp. 1130, 1144 (E.D.N.Y. 1979) (*Stolz* established a "procedure to be followed in representative capacity cases" whereby actions may be suspended pending determination by Surrogate's Court as to whether plaintiff is proper administrator), *rev'd on other grounds*, 632 F.2d 219 (2d Cir. 1980); *see also Gayle v. NYS Div. of Parole*, No. 95 CIV. 10552, 1997 WL 53156, at *1 (S.D.N.Y. Feb. 10, 1997) (Sotomayor, J.) (trial court has authority to stay the proceedings pending application to the Surrogate's Court).

render voidable what was done, must involve a wrongful act or threat precluding the exercise of a free will.”) (citation omitted).⁵ Here, Plaintiff fails to allege adequately any of these elements.

First, Plaintiff fails to plead an affirmative, wrongful threat connected to the 1938 Sale. *See Interpharm*, 655 F.3d at 142, 147-148. Plaintiff does *not* plead that the buyers of the Painting from Leffmann in 1938—Hugo Perls and Paul Rosenberg—pressured Leffmann in a wrongful manner. This alone is fatal to the claim because, under New York law, duress must be caused by the actions of the counterparties. *See, e.g., Mandavia v. Columbia Univ.*, 912 F. Supp. 2d 119, 127 (S.D.N.Y. 2012) (“in a contract dispute ..., the duress at issue must have originated from the defendant,” and “the press of financial circumstances, not caused by the defendant, will not be deemed duress”) (citation omitted).

Realizing that she cannot allege duress in the actual transaction between Leffmann and Perls/Rosenberg, Plaintiff turns her focus instead on those who were *not* parties to the sale of the Painting: the Italian Fascists. AC ¶¶ 3, 9. Based on the allegations of (undeniably) hostile surroundings alone, Plaintiff extrapolates the theory that Leffmann “was forced by the circumstances in Fascist Italy to sell [the Painting] under duress in 1938.” AC ¶ 9. This is the central allegation in Plaintiff’s pleading.

But it does not suffice to plead duress based on alleged pressure from general

⁵ Plaintiff has argued that the issue of duress should be governed by Italian law rather than New York law, but this Court need not address any choice-of-law argument where, as here, there are no differences between potentially applicable laws “upon which the outcome of the case is dependent.” *See Bakalar v. Vavra*, 619 F.3d 136, 139 (2d Cir. 2010). Italian law—like New York law—requires the party claiming duress to plead and prove the same type of “wrongful threat” that caused the victim to enter into a contract which she otherwise would not have entered into. *See* 1865 Ital. Civil Code, arts. 1108, 1111 – 1113 (requiring a specific, concrete and serious threat of considerable and unjust harm). Indeed, under Italian law, it is not enough to show that Fascist officials expressly threatened the seller; rather, the claimant must also show that such threats related directly to the transaction in question. *See, e.g.,* Tribunal of Bologna, 26 Feb. 1952 at 355 et seq. (no duress where sale of land followed threats by Fascist leaders, because threats deemed too generic).

circumstances; rather, duress requires allegations of an affirmative “wrongful threat” that is specific to the transaction and sufficiently coercive to induce consent. *See Interpharm*, 655 F.3d at 142, 147-148 (requiring specific threat that precludes victim’s free will); *see also In re Estate of Heric*, 669 N.Y.S.2d 791, 792 (Sur. Ct. 1998) (“...a state of mind, such as fear ... (does not) constitute coercion”) (quotation marks omitted); *Manufacturers Hanover Trust Co. v. Jayhawk Assocs.*, 766 F. Supp. 124, 128 (S.D.N.Y. 1991) (no duress based only on “economic pressure in general,” without affirmative coercion specific to the transaction); *Orix Credit All. v. Bell Realty*, No. 93 CIV. 4949 (LAP), 1995 WL 505891, at *4 (S.D.N.Y. Aug. 23, 1995) (citing authorities stating the same).⁶ Even in wartime, general conditions of economic hardship are insufficient to establish duress. *See Hugo V. Lowei, Inc. v. Kips Bay Brewing Co.*, 63 N.Y.S.2d 289, 290 (Sup. Ct. 1946); *see Bethlehem Steel Corp.*, 405 N.Y.S.2d at 82 (citing *Lowe*, 63 N.Y.S.2d at 290).⁷

A U.S. district court that dismissed another Nazi-era duress claim found it noteworthy that the sale at issue in that case “occurred outside Germany by and between private individuals ... The Painting was not confiscated or looted by the Nazis; the sale was not at the direction of,

⁶ Italian law is in accord. Under Italian law—like New York law—it is not enough to allege duress based on general circumstances such as rising anti-Semitism or Fascist persecutions. *See, e.g.*, Court of Cassation, 21 Mar. 1963, No. 697 at 858 et seq. (“[I]t is not the mere fear of retaliation, easy to arise in the mind of citizens during the Fascist regime, in case of refusal of the requests from the dominant political party, or from some of its leaders ... who requested and solicited that contract, *but a real threat of retaliation must have actually occurred.*”) (emphasis added). Rather, there must be a specific and direct link between the persecution or threat and the transaction in question. *See* Court of Appeal of Rome, 9 Apr.- 31 Aug. 1953 at 25 et seq. (“the generic and wholesale persecutions exerted by the Fascists against their political opponents ... where there is no specific and direct relationship between such persecutions and the agreement concluded allegedly as a result of duress [‘violenza’] do not amount to duress [‘violenza’] under Article 1108 of the Civil Code of 1865.”).

⁷ Italian law is the same; even in cases where Fascist officials pressured an individual—which is not our case—no duress exists under Italian law if the pressured individual ultimately sold his property due to his own financial needs. *See, e.g.*, Court of Cassation, 17 Mar. 1954 at 657 et seq. If the Court would like copies and/or translations of any cited Italian documents, the Museum would be happy to provide them.

nor did the proceeds benefit, the Nazi regime.” *Toledo Museum of Art v. Ullin*, 477 F. Supp. 2d 802, 805 (N.D. Ohio 2006) (granting possessor declaratory judgment based on statute of limitations); *see also Bakalar v. Vavra*, 819 F. Supp. 2d 293, 300 (S.D.N.Y. 2011) (entering declaratory judgment on laches for possessor and noting, “Here, ... there is no ... evidence that the Nazis ever possessed the Drawing, and therefore ... this Court cannot infer duress based on Nazi seizure.”), *aff’d*, 500 F. App’x 6 (2d Cir. 2012), *cert. denied*, 133 S. Ct. 2038 (2013). The same is true here. Unwinding a sale of this sort—*i.e.*, one outside Germany, by and between private individuals, and not at the direction of or for the benefit of the Nazi or Fascists regimes—would be unprecedented and contrary to longstanding black letter law of contracts.

Second, Plaintiff fails to plead that Leffmann was precluded from exercising his free will; to the contrary, Plaintiff admits that Leffmann made his own choices regarding the Painting. For example, Plaintiff alleges that while the Painting was safe in Switzerland (AC ¶ 14), Leffmann took his time deciding to offer the Painting for sale on the international art market (AC ¶¶ 28, 32, 33, 36), freely negotiated with multiple parties for months or even years prior to the 1938 Sale (AC ¶¶ 33, 36-37), sought to “improve his leverage to maximize” the sale price (AC ¶ 36), rejected at least two other offers from other dealers, at least one of which was close in time to the one he accepted (AC ¶¶ 33, 36), and “finally accepted” the offer from Rosenberg and Perls, apparently because they had matched the highest previous offer (AC ¶ 37), and retained the proceeds of the Sale (AC ¶ 47). These allegations are fatal to any claim of duress because they demonstrate that Leffmann exercised free will. *See Manufacturers Hanover Trust Co.*, 766 F. Supp. at 128 (party claiming economic duress must show a “wrongful threat by the other party which precluded the exercise of its free will” in making the contract at issue”); *see also Cont’l Airlines, Inc. v. Lelakis*, 943 F. Supp. 300, 307 (S.D.N.Y. 1996) (*citing Austin Instrument, Inc. v.*

Loral Corp., 272 N.E.2d 533, 535 (N.Y. 1971) and *US West Fin. Servs., Inc. v. Tollman*, 786 F. Supp. 333, 338 (S.D.N.Y. 1992)), *aff'd*, 129 F.3d 113 (2d Cir. 1997).

Third, Plaintiff fails to plead facts showing that Leffmann was left with no alternative. *See Kamerman*, 891 F.2d at 431. Plaintiff speculates that Leffmann must have agreed to the 1938 Sale because he was “[t]rying to raise as much cash as possible for the flight [from Italy] and whatever else the future would bring” (AC ¶ 36), but even if that were true, it would not establish that he had “no alternative” but to agree to the 1938 Sale. Plaintiff herself concedes that Leffmann had other options, as he apparently spent months or possibly years looking for the right offer for the Painting on the international market and allegedly rejected at least two other offers before accepting the highest offer from Rosenberg and Perls. AC ¶ 33, 36-37.

Moreover, Plaintiff’s allegations make clear that Leffmann had additional assets and other alternatives. Indeed, in 1937, he sold a house and factory in Florence for cash. AC ¶ 23. Plaintiff concedes that the Leffmanns had assets at the time of the 1938 Sale sufficient to cover considerable expenses for a period of years after leaving Italy—including the costs of relocating to Switzerland (twice) and Brazil, living expenses, international travel, taxes, fines, and bribes—before, during, and after the War, apparently without ever working again. AC ¶¶ 43-44, 46-48. Such allegations undercut the allegation that the proceeds of the 1938 Sale (allegedly \$12,000) “constituted the majority of the Leffmanns’ available resources in June 1938” (AC ¶ 47) and are fatal to any claim that Leffmann had “no choice” but to sell the Painting.

III. Even Assuming Duress, Dismissal Under 12(b)(6) Would Be Required Because The 1938 Sale Was Subsequently Ratified

Even assuming that the 1938 Sale had been tainted by duress, dismissal under Rule 12(b)(6) would be required because Leffmann subsequently ratified the contract. Under both New York and Italian law, duress renders a contract *voidable* at the option of the victim. *See*

Mandavia, 912 F. Supp. 2d at 128-29; *Landers v. State*, 391 N.Y.S.2d 723, 725 (App. Div.) (“It is fundamental that a contract obtained by duress is merely voidable and may be subsequently ratified and affirmed.”), *aff’d*, 373 N.E.2d 281 (N.Y. 1977).⁸ A victim of duress seeking to repudiate a contract must do so promptly after the duress subsides, otherwise, he will be deemed to have “ratified” the contract. *See VKK Corp. v. Nat’l Football League*, 244 F.3d 114, 123 (2d Cir. 2001); *Int’l Halliwell Mines, Ltd. v. Cont’l Copper & Steel Indus., Inc.*, 544 F.2d 105, 108 (2d Cir. 1976); *Orix* 1995 WL 505891, at *5. A victim of duress “may ratify [the] contract ... by [1] ‘intentionally accepting benefits under the contract,’ [2] ... ‘remaining silent or acquiescing in the contract for a period of time after he has the opportunity to avoid it,’ or [3] ... ‘acting upon it, performing under it, or affirmatively acknowledging it.’” *VKK Corp.*, 244 F.3d at 123 (citation omitted); *Sheindlin v. Sheindlin*, 450 N.Y.S.2d 881, 882 (App. Div. 1982) (citing *Bethlehem Steel*, 405 N.Y.S.2d 80 and *Fowler v. Fowler*, 188 N.Y.S.2d 529 (App. Div. 1921)).⁹

Here, it is clear on the face of the Amended Complaint that Leffmann ratified the 1938 Sale. Plaintiff admits that Leffmann received and retained the proceeds from the 1938 Sale and allegedly continued to spend the proceeds as late as 1941, *i.e.*, roughly three years after leaving Italy. AC ¶ 47. Plaintiff also alleges that the Leffmanns survived the War and lived until 1956 and 1966, respectively, (AC ¶¶ 49-50), and yet there is no allegation that the Leffmanns ever

⁸ Italian law is in accord; an action for duress can be brought only by the interested contracting party; *see* N. Stolfi, *Diritto civile*, Vol. I, part 2, Turin, 1931, at 763 et seq.; and G. MARTINEZ, *Principi di diritto civile italiano. Parte generale*, Naples, 1936, at 655 and 665 et seq.

⁹ Italian law is the same. Under Article 1309 of the 1865 Italian Civil Code, a victim of duress can ratify (or confirm) the contract by declaring that he/she intends to ratify the contract, by performing under it in the awareness of duress, or by simply not repudiating within the five-year limitation period, which runs from when the duress has ceased, in accordance with Article 1300; *see* G. LOMONACO, *Delle obbligazioni e dei contratti in genere*, Vol. II, Naples, 1890, at 511; G.P. CHIRONI, *Istituzioni di diritto civile italiano*, Vol. I, Turin, 1888, at 123-124; and G. GIORGI, *Teoria delle obbligazioni*, Vol. VIII, Florence, 1888, at 281-282.

repudiated the 1938 Sale or made any claim for the Painting, despite the fact that the Painting has been displayed at the Museum since Foy donated it. This is fatal to Plaintiff's claim. See, e.g., *Matter of Peters*, 821 N.Y.S.2d at 66. In *Matter of Peters*, the plaintiff was the executrix of the estate of the wife and successor-in-interest to the alleged original owner of a painting the estate sought to recover. There, the original owner had left Nazi Germany in 1933, but the painting in question had been entrusted to his brother, an art dealer, who sold the work in Germany in 1934 without first obtaining his consent. It was plaintiff's theory that the painting had been converted by the brother who sold the painting, but the court rejected that theory on the ground that the original owner "did not treat it as such." *Id.* "Though he had contemporaneous knowledge of the disposition of the painting and the identity of the person who possessed it, [he] failed to report a theft and, indeed, did not regard the painting as having been stolen." *Id.* The court reasoned that if the original owner himself "did not treat the painting as stolen in 1936, his wife's estate will not be heard to speculate, some 70 years after the fact, that it might have been misappropriated and that its acquisition at auction by the unidentified prospective defendant was therefore tainted." *Id.* at 66-67.

The same reasoning applies here, where Plaintiff has alleged that Leffmann received and retained the proceeds of the Sale and lived well past the Nazi era (AC ¶¶ 47, 49), and yet has not alleged that Leffmann himself ever claimed duress, sought the return of the Painting, or made a post-war claim for the Painting. Under these circumstances, a purported representative of the original owner's "wife's estate will not be heard to speculate, some [78] years after the fact, that [the Painting] might have been misappropriated and that its [possession by the Museum] was therefore tainted." See *Matter of Peters*, 821 N.Y.S.2d at 66-67.

Although New York law does not prescribe a specific time period for repudiating a contract on the basis of duress, courts have held “delays as short as six months have constituted forfeiture of a duress claim.” *Cavelli v. New York City Dist. Council of Carpenters*, 816 F. Supp. 2d 153, 164 (E.D.N.Y. 2011) (citing *VKK*, 244 F.3d at 123); *see also, e.g., Teachers Ins. & Annuity Ass’n v. Wometco Enters.*, 833 F. Supp. 344, 348-49 (S.D.N.Y. 1993) (eighteen months of performance constituted ratification); *Grubel v. Union Mut. Life Ins. Co.*, 387 N.Y.S.2d 442, 443 (App. Div. 1976) (two years of accepting benefits constituted ratification)). Indeed, the burden on the party claiming duress “increases proportionately with the delay in initiating suit or otherwise repudiating the contract in question.” *VKK*, 244 F.3d at 123 (citation omitted). Italian law is in accord. *See* 1865 Ital. Civil Code, art. 1300 (action for nullity may be brought within five years from when the duress has ceased, or else contract is deemed ratified).

IV. Even Assuming Duress And The Absence Of Ratification, Dismissal Under Rule 12(b)(6) Would Be Required Because Good Title Subsequently Passed To A Good-Faith Purchaser

Under New York law, “[a] person with voidable title has power to transfer a good title to a good faith purchaser for value.” *Solomon R. Guggenheim Found. v. Lubell*, 550 N.Y.S.2d 618, 623 (App. Div. 1990) (quoting UCC 2-403(1)), *aff’d*, 569 N.E.2d 426 (N.Y. 1991); *Bakalar*, 819 F. Supp. 2d at 299 (same). “[I]f defendant is a good-faith purchaser and the [painting] was not stolen, then defendant’s title is superior to plaintiff’s.” *Matter of Peters*, 821 N.Y.S.2d at 67 (quoting *Lubell*, 550 N.Y.S.2d at 618); *see also Kaminsky v. Karmin*, 589 N.Y.S.2d 588, 590 (App. Div. 1992) (“A bona fide purchaser for value may obtain a good title from one who has a voidable title.”)¹⁰

¹⁰ The 1941 sale of the Painting from a New York gallery to a New York collector is governed by New York law. Nonetheless, there is no conflict between Italian law and New York law: under Italian law, receiving possession through a good-faith purchase remedies the possible defect in the seller’s title of ownership. *See* 1865 Ital. Civil Code, art. 707.

Here, the Museum holds good title because Foy acquired good title to the Painting when she purchased it for fair market value in 1941, and she passed that good title to the Museum when she donated it to the Museum in 1952. Even if Plaintiff could establish that Perls and Rosenberg had acquired and held only voidable title (which she cannot), Foy's good-faith purchase of the Painting would have perfected title in 1941. At that time, Foy paid fair market value for the Painting; and, Plaintiff has not alleged that Foy lacked good faith or was even aware of any alleged defect in the title. Accordingly, Foy obtained good title in 1941, which she subsequently conveyed to the Museum when she donated the Painting in 1952. AC ¶ 54; *see* 3A Anderson U.C.C. § 2-403:4 (3d ed.) ("A donee acquires whatever title a donor possesses."). The Museum therefore has held good title to the Painting for nearly 65 years.

V. In Addition To The Reasons The Amended Complaint Should Be Dismissed On The Merits, It Is Also Time-Barred¹¹

A. The Statute Of Limitations Bars Plaintiff's Claims

Plaintiff's replevin and conversion claims are untimely as a matter of law because New York's three-year limitations period for such actions expired decades ago. N.Y. C.P.L.R. § 214(3); *see also Grosz v. Museum of Modern Art*, 772 F. Supp. 2d 473, 481 (S.D.N.Y. 2010), *aff'd*, 403 F. App'x 575 (2d Cir. 2010). Because the Museum acquired title to the Painting when Foy donated it in 1952, the time to challenge that acquisition expired in 1955.

Any counterargument that the time to challenge the Museum's acquisition did not begin to run until Plaintiff recently demanded the Painting and the Museum refused that demand fails

¹¹ The AAM "acknowledges that in order to achieve an equitable and appropriate resolution of claims, museums may elect to waive certain available defenses." AAM, *Standards Regarding the Unlawful Appropriation of Objects During the Nazi Era*, available at <http://www.aam-us.org/resources/ethics-standards-and-best-practices/collections-stewardship/objects-during-the-nazi-era>. Because the Museum determined that the 1938 sale was not an "unlawful appropriation," it is not waiving defenses.

for at least three reasons. First, the demand-and-refusal rule does not revive a stale claim that expired three generations and roughly six decades ago, during the lifetimes of the Leffmanns, both of whom were still alive when the Painting was sold to Foy in 1941 and donated to the Museum in 1952. AC ¶¶ 49-50. The New York Court of Appeals has said that the requirement to make a demand and receive a refusal before commencing a proceeding “does not mean that the aggrieved party can, by delay in making his demand, extend indefinitely the period during which he is required to take action.” *Austin v. Board of Higher Educ.*, 158 N.E.2d 681, 688 (N.Y. 1959); *see also Matter of Peters*, 821 N.Y.S.2d at 67-68 (quoting *Austin*, 158 N.E.2d at 688).

Second, the demand and refusal rule does not apply where, as here, the possessor “openly deals with the property as its own.” *See SongByrd, Inc. v. Estate of Grossman*, 206 F.3d 172, 182-83 (2d Cir. 2000).¹² “[T]o establish a conversion it is unnecessary to show a demand when the holder exercises an act of ownership inconsistent with the ownership and dominion of the true owner, as such an act itself constitutes an unlawful misapplication amounting to a conversion.” *Del Piccolo v. Newburger*, 9 N.Y.S.2d 512, 513 (1st Dep’t 1939). Here, the Museum has openly exercised ownership and dominion over the Painting since 1952. Accordingly, any claim for replevin or conversion expired in 1955. *See SongByrd*, 206 F.3d at 182-83 (plaintiff’s cause of action accrued when defendant began using plaintiff’s property as its own); *Sporn v. MCA Records, Inc.*, 448 N.E.2d 1324, 1327 (N.Y. 1983) (same).

¹² *See also St. John’s Univ. v. Bolton*, 757 F. Supp. 2d 144, 180 (E.D.N.Y. 2010) (“The New York Court of Appeals has consistently held that a cause of action for conversion against a bona fide purchaser accrues *either* after demand and refusal *or* earlier, when a bona fide purchaser openly takes action in respect of the property which is inconsistent with the true owner’s rights.” (emphasis in original)), *aff’d*, 450 F. App’x 81 (2d Cir. 2011); *accord Lenard v. Design Studio*, 889 F. Supp. 2d 518, 532 (S.D.N.Y. 2012); *Kapernekas v. Brandhorst*, 638 F. Supp. 2d 426, 428 (S.D.N.Y. 2009).

Third, while the Museum is loath to rely on allegations that it acted in bad faith in its acquisition of the Painting (*see* AC ¶¶ 56-65), the Museum is forced to accept those allegations as true at this stage. By alleging the Museum hid the Leffmann provenance, Plaintiff runs up against the law that the demand-and-refusal doctrine does not apply to bad-faith possessors. *See Grosz*, 772 F. Supp. 2d at 481-82 (“statute of limitations for conversion and replevin automatically begins to run against a bad faith possessor on the date of the ... bad faith acquisition”—it does not wait for demand to be made and refused).¹³ Plaintiff’s unfounded allegations against the Museum’s good name therefore compel dismissal on limitations grounds.

B. Laches Bars Plaintiff’s Claims

Plaintiff’s claims are also barred by laches because the Leffmanns and their heirs unreasonably delayed bringing the claims, and that delay has prejudiced the Museum. *See Perez v. Danbury Hosp.*, 347 F.3d 419, 426 (2d Cir. 2003). Here, Paul and Alice Leffmann lived until 1956 and 1966, respectively, AC ¶¶ 49-50, and they never brought a claim for the Painting or otherwise challenged the 1938 Sale, despite the fact that the Painting has been displayed at the Museum since Foy donated it in 1952. Laches therefore would have operated to bar any claims during their lifetimes, and during the lifetimes of the succeeding generation. Given that the laches inquiry “focuses not only on efforts by the party to the action, but also on efforts by the

¹³ *See also Close-Barzin v. Christie’s, Inc.*, 857 N.Y.S.2d 545, 546 (App. Div. 2008) (conversion claim time-barred “since [plaintiff] alleges bad faith and the action was commenced more than three years after the alleged taking of the property a demand and refusal was not a prerequisite to commencement of an action for conversion.”); *DeWeerth v. Baldinger*, 836 F.2d 103, 106-07 (2d Cir. 1987); *State v. Seventh Regiment Fund, Inc.*, 774 N.E.2d 702, 710 (N.Y. 2002); *Solomon R. Guggenheim Found. v. Lubell*, 569 N.E.2d 426, 429-30 (N.Y. 1991).

party's family," *Bakalar*, 819 F. Supp. 2d at 303 (citation omitted),¹⁴ Plaintiff is charged with the decision of three prior generations not to pursue any claim. By the time Plaintiff made her initial demand for the return of the Painting in 2010, more than 70 years had passed since the Leffmanns sold the Painting in 1938, nearly 70 years had passed since Foy purchased it in 1941, and nearly 60 years had passed since Foy donated it to the Museum in 1952. This delay was unreasonable.

Moreover, this unreasonable delay has prejudiced this Museum due to "deceased witnesses, faded memories, [and] lost documents," which causes "real and substantial" prejudice to the Museum. *Sanchez*, 2005 WL 94847, at *3; *see also Bakalar*, 819 F. Supp. 2d at 306 ("prejudice ... is clear" where delay of 70 years had similar consequences); *Greek Orthodox Patriarchate of Jerusalem v. Christie's, Inc.*, No. 98 Civ. 7664, 1999 WL 673347, at *10-11 (S.D.N.Y. Aug. 30, 1999). Plaintiff's claim is, therefore, barred by laches. *See Matter of Peters*, 821 N.Y.S. 2d at 69 ("where the original owner's lack of due diligence and prejudice to the party currently in possession are apparent, [laches] may be resolved as a matter of law"); *Bakalar*, 819 F. Supp. 2d at 303-07 (laches barred Nazi-era duress claim); *Wertheimer v. Cirker's Hayes Storage Warehouse, Inc.*, 752 N.Y.S.2d 295, 297 (App. Div. 2002) (laches barred claim for painting sold by person to whom owner entrusted it while owner fled Nazis).

CONCLUSION

For the foregoing reasons, the Museum respectfully requests that this Court dismiss the Amended Complaint, or stay the case.

¹⁴ *See also Sanchez v. Trs. of Univ. of Pa.*, No. 04 Civ. 1253, 2005 WL 94847, at *2-3 (S.D.N.Y. Jan. 18, 2004) (considering lack of effort by plaintiff's grandfather and father); *Wertheimer v. Cirker's Hayes Storage Warehouse, Inc.*, 752 N.Y.S.2d 295, 297 (App. Div. 2002) (noting lack of family inquiries).

Dated: New York, New York
November 30, 2016

Respectfully submitted,

/s/ David W. Bowker _____

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*Attorneys for Defendant The Metropolitan
Museum of Art*

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW**

-----	X
LAUREL ZUCKERMAN, AS ANCILLARY	:
ADMINISTRATRIX OF THE ESTATE OF	:
ALICE LEFFMANN,	:
	: 16 CIV 07665 (LAP)
Plaintiff,	:
	:
vs.	:
	:
THE METROPOLITAN MUSEUM OF ART,	:
	:
Defendant.	:
	:
-----	X

**DECLARATION OF DAVID BOWKER IN SUPPORT OF THE METROPOLITAN
MUSEUM OF ART'S MOTION TO DISMISS THE AMENDED COMPLAINT**

I, David W. Bowker, declare as follows:

1. I am counsel to Defendant The Metropolitan Museum of Art ("Museum") in the above-captioned matter, and I am competent to testify to the matters below. I submit this declaration in support of the Museum's Motion to Dismiss The Amended Complaint.

2. Attached hereto as Exhibit 1 is a true and correct copy of the Museum's November 21, 2016 Petition To Vacate Decree submitted to the Surrogate's Court of the State of New York, County of New York, File No. 2010-2964.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed in Washington, D.C. this 30th day of November, 2016.

/s/ David W. Bowker
David W. Bowker

A-87

EXHIBIT 1

A-88

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New York County Surrogate's Court
MISCELLANEOUS DEPT.
NOV 21 2016
RECEIVED

SURROGATE'S COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
Petition of The Metropolitan Museum of Art to Vacate the
Decree, dated October 18, 2010, Granting Ancillary Letters of
Administration c.t.a. in the Estate of

**PETITION
TO VACATE
DECREE**

ALICE LEFFMANN,

Deceased.

File No. 2010-2964

-----X

To the Surrogate's Court, New York County:

The petition of The Metropolitan Museum of Art (the "Met") hereby alleges:

1. The Met is a not-for-profit charitable corporation with its principal place of business located at 1000 Fifth Avenue, New York, New York 10028.
2. The Met brings this proceeding to vacate a decree of this Court, which granted a petition that sought to admit the will of Alice Leffmann (the "Decedent") to ancillary probate and to appoint Laurel Zuckerman as Ancillary Administrator c.t.a. of the Decedent's estate. Acting under the apparent authority of such ancillary letters, Ms. Zuckerman recently sued the Met in federal court.
3. In her federal action, Ms. Zuckerman (who has no beneficial or fiduciary interest in the Decedent's estate independent of her purported status as Ancillary Administrator c.t.a.) alleged that a painting by Pablo Picasso entitled, "The Actor," belongs not to the Met, but, rather, to the Decedent's estate. The painting has been hanging on the Met's walls for the public to enjoy since 1952, when it was donated to the Met by Thelma Chrysler Foy, who had purchased it in 1941, in an arm's length sale, about twenty-five years before Decedent died. Neither the Decedent nor her husband ever challenged either the sale of the painting to Thelma

Chrysler Foy or the Met's title to the painting. A copy of the amended federal complaint is attached as Exhibit A.

4. The decree in question, dated October 18, 2010 (the "Decree," a copy of which is attached as Exhibit B), purports to admit the Decedent's Last Will and Testament dated November 14, 1962 (the "Will") to ancillary probate in New York and to appoint Laurel Zuckerman Ancillary Administrator *c.t.a.*

5. The Met is moving to dismiss the federal lawsuit on multiple grounds, including, but not limited to, Ms. Zuckerman's lack of standing and authority to act as Ancillary Administrator *c.t.a.* estate because of her defective appointment as such. In addition, the Met is moving in the alternative to stay the federal action pending this Court's resolution of the instant proceeding.

6. This Court lacked jurisdiction over necessary parties who had priority to Ms. Zuckerman in issuing the Decree for the reasons set forth below. Accordingly, vacatur of the Decree is appropriate and necessary.

1. **FACTUAL BACKGROUND**

7. The Decedent died testate on June 25, 1966, a domiciliary of Zurich, Switzerland and, as a result, her estate is governed by Swiss law.

8. In compliance with Swiss law, the Will was notified to the "statutory heirs" (the functional Swiss-law equivalent of the New York term "intestate distributees"), the "appointed heirs" (the functional Swiss-law equivalent of the New York term "residuary beneficiaries," commonly called the "community of heirs," which term shall be used herein), the legatees, and the executor on December 5, 1966 by the Regional Court of Zurich. In its Order of notification, the Regional Court noted that the Decedent appointed Schweizerische Bankgesellschaft (*i.e.*

United Bank of Switzerland, the successor-in-interest of which, due to mergers, is UBS AG), as executor. A copy of the Will, together with the Decree of the Swiss court dated December 5, 1966, and an English translation of both, are collectively annexed as Exhibit C.

9. The Will has no provision appointing a person as executor with respect to property located in New York (*see* SCPA 1604(1)(a)). Rather, based on Swiss law, the executor appointed by the Decedent was in charge of administering all worldwide assets of the estate, irrespective of their geographical location.

10. The administration and distribution of the Decedent's estate in Switzerland was completed over forty years ago.

11. Under her Will, the Decedent bequeathed her residuary estate to twelve persons, including her niece, Berta Anna Alice Brandenstein.

12. Ms. Brandenstein post-deceased the Decedent, on February 17, 1994, a domiciliary of England.

13. On April 28, 1994, the High Court of Justice of Scotland admitted Ms. Brandenstein's will to probate and appointed Nicholas John Day, of Scotland, and Malcolm Nicholas Mitchell, of Wales, executors. Mr. Mitchell post-deceased Ms. Brandenstein, and no successor executor was appointed in his place.

14. By amended petition, verified on August 17, 2010, Mr. Day (who is the husband of a child of a cousin of a niece of the Decedent), in his capacity as executor of Ms. Brandenstein's estate (*i.e.*, the estate of one of the members of the Decedent's community of heirs) sought the issuance of Ancillary Letters of Administration *c.t.a.* in the Decedent's estate to Laurel Zuckerman. Ms. Zuckerman has no interest in Ms. Brandenstein's estate. A copy of

Mr. Day's amended petition is attached as Exhibit D. Upon information and belief, neither Ms. Zuckerman nor Mr. Day is a blood relative of the Decedent.

15. The "WHEREFORE" clause of Mr. Day's amended petition, in its entirety, stated the following:

WHEREFORE, the petitioner(s) pray(s):
(a) that process issue to all necessary parties
(b) that the Will/Codicil be admitted to ancillary probate and
(c) that ancillary letters issue thereon as follows:
Ancillary Letters of Administration c.t.a. to:
Laurel Zuckerman.

16. In support of his petition, Mr. Day filed an affirmation of his attorney (who is also the attorney of Ms. Zuckerman), Alexander M. Pnpovich, Esq., dated August 18, 2010, a copy of which, with exhibits thereto, is attached as Exhibit E.

17. A Citation, dated August 27, 2010 (a copy of which is attached as Exhibit F), was issued to multiple persons.

18. No waiver of Citation or consent to the requested relief was filed by any person in connection with the proceeding to appoint Ms. Zuckerman.

II. DEFECTS IN APPOINTMENT

a. Ms. Zuckerman's Appointment as Ancillary Fiduciary Was Defective

19. Ms. Zuckerman's appointment as Ancillary Administrator c.t.a. was defective for five independent reasons. Each defect, in its own right, deprived the Court of jurisdiction to appoint Ms. Zuckerman as the ancillary administrator c.t.a.

20. First, UBS AG, the successor-in-interest to the executor named in the Will (which, under these facts, is the "person" with the highest priority to receive ancillary letters under SCPA 1604), neither (a) renounced its appointment in accordance with SCPA 1417, *i.e.*,

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by an acknowledged writing, nor (b) was directed to qualify within a time specified by the Court or else be deemed to have renounced such appointment in accordance with SCPA 1416. See *infra* II.b.ii.

21. Second, assuming, *arguendo*, that UBS AG effectively renounced its appointment (which it did not), those next in line of priority to receive ancillary letters under SCPA 1604, *i.e.*, the members of the “community of heirs” (discussed *infra*) neither (a) renounced their appointment nor (b) were directed to qualify within a time specified by the Court or else be deemed to have renounced such appointment in accordance with SCPA 1604(1)(c) and (2). See *infra* II.b.iii and II.b.v.

22. Third, assuming, *arguendo*, that both UBS AG and the community of heirs effectively renounced their appointment under SCPA 1604 (which they did not), if Mr. Day wished for Ms. Zuckerman to be appointed ancillary administrator c.t.a. under SCPA 1416(6), Mr. Day was required to file acknowledged consents of all the beneficiaries. In fact, he did not do so. See *infra* II.b.vii.

23. Fourth, assuming, *arguendo*, that both UBS AG and the community of heirs effectively renounced their appointment under SCPA 1604 (which they did not), and given the lack of filed, acknowledged consents of all the beneficiaries, if Mr. Day nonetheless wished to have an ancillary administrator c.t.a. appointed, he was required to cause the Court to: (a) issue Citation to the Public Administrator (the “P.A.”), (b) appoint the P.A. ancillary fiduciary, or (c) direct the P.A. to qualify within a certain time or else be deemed to have renounced her appointment pursuant to SCPA 1604(1)(d) and SCPA 1418(2). In fact, he did not do so. See *infra* II.b.viii.

24. Fifth, Mr. Duy failed to cause the Court to issue Citation to six persons (or their fiduciaries) upon whom Citation was required to be served under SCPA 1609 – the same six persons whom his attorney admitted were necessary parties. *See infra* *l.c.*

b. Relevant Statutory Framework Regarding Order of Priority For Ancillary Letters

25. SCPA 1604 governs ancillary letters on a foreign will. It sets forth a mandatory priority of persons entitled to serve as ancillary fiduciary under a foreign will to be admitted to probate under SCPA 1602.

26. SCPA 1604 states, in its entirety:

1604. Ancillary letters on a foreign will

1. Upon admission of a will to probate under 1602 the court shall issue, if such be requested, ancillary letters to the following persons in the following order:

(a) The person expressly appointed in the will as executor with respect to property located within this state.

(b) The person to whom domiciliary letters have been issued or if domiciliary letters are not issued, the person appointed in the will to administer all property wherever located.

(c) The person acting in the domiciliary jurisdiction to administer and distribute the testator's estate.

(d) A person entitled under this act to letters of administration *c.t.a.*

2. If no person named in any subparagraph of subdivision 1 is willing to qualify or to designate a person eligible to receive ancillary letters they shall issue to a person in the succeeding subparagraph of such subdivision who will qualify or to a person designated by him who is eligible to receive letters.

i. **First in the Order of Priority to Ancillary Letters: SCPA 1604(1)(a)**

27. The person with the highest priority to serve as ancillary fiduciary under SCPA 1604 is the person expressly appointed in the will as executor with respect to the property located within New York State (SCPA 1604(1)(a)). The Decedent appointed no such person in her Will.

ii. **Second in the Order of Priority to Ancillary Letters: SCPA 1604(1)(b)**

28. The person with the second highest order of priority is the person to whom domiciliary letters have been issued or, if domiciliary letters are not issued, the person appointed in the will to administer all property wherever located (SCPA 1604(1)(b)). Here, domiciliary letters were issued to Schweizerische Bankgesellschaft, whose successor-in-interest is UBS AG.

29. Under SCPA 1417, if a person is named as executor, then that person must either (a) qualify to serve or (b) renounce the right to serve before anyone else may properly be appointed in such person's place and stead. Here, the named executor, Schweizerische Bankgesellschaft, the successor-in-interest of which is UBS AG, did neither. Since an acknowledged authorized renunciation of UBS AG was not filed with the Court pursuant to SCPA 1417, Mr. Day should have, but did not, cause the Court to direct UBS AG to qualify within a time specified by the Court or in default of so doing to be deemed to have renounced the appointment within fifteen days after the Will's admission to ancillary probate (*see* SCPA 1416(1)).

30. The only attempt to substantiate UBS AG's renunciation violated SCPA 1417 on its face. In his affirmation submitted in support of Mr. Day's petition, Mr. Popovich claimed that he had written and spoken to a member of the "Legal Wealth Planning" department of UBS

in Zurich, Switzerland, who told him that UBS declined to take any further action with regard to the Decedent's estate. Notwithstanding the lack of proof that this UBS employee had any authority to bind UBS, this alleged hearsay statement is not in the form of an acknowledged instrument required by SCPA 1417 for a renunciation.

31. Since the mandatory priority afforded to UBS AG pursuant to SCPA 1618(1)(b) was not observed, the Court lacked personal jurisdiction, which necessitates the Decree to be vacated.

iii. **Third in the Order of Priority to Ancillary Letters; SCPA 1604(1)(c)**

32. The person with the third highest order of priority is the person acting in the domiciliary jurisdiction to administer the testator's estate (SCPA 1604(1)(c)). In the instant case, the administration of the Decedent's Switzerland estate was completed long ago.

33. The Met's Swiss counsel advises that, generally, there is no probate as we know it under Swiss law. Rather, the beneficiaries automatically and *ipso jure* become joint and collective owners of the estate; ownership of estate assets does not devolve to any person in a fiduciary capacity. The beneficiaries jointly are referred to as a "community of heirs." The community of heirs is not a legal entity and cannot therefore hold legal title in its own name. Rather, all members have joint ownership. Also, the community of heirs does not have legal capacity to sue or to be sued. Instead, all of the members of the community of heirs would have to act jointly to file a claim on behalf of the estate.

34. However, if a Swiss testator appoints an executor in a will, the executor, if notified by the Swiss court of his or her appointment by the Testator, is responsible for administering and managing the estate's assets and for preparing a distribution agreement among the beneficiaries. The executor would then have exclusive authority to act on behalf of

the estate. If a new estate asset is discovered after the estate administration has been completed or an extended period passes, the executor's function is automatically reinstated. However, an executor may decline to resume its function. If the executor so declines, the community of heirs has to act jointly to carry out any further estate administration.

35. Here, as alleged by Mr. Popovich, the administration of the Decedent's estate in Switzerland concluded many decades ago. There is no written evidence of whether UBS AG "reassumed" its executorial function. To the extent it does, then UBS AG would have priority to be appointed ancillary fiduciary, and the question becomes whether UBS AG has renounced such appointment. To the extent it does not reassume its executorial function, then, under Swiss law, all the members of the community of heirs jointly become the persons currently able to act worldwide to administer and distribute newly discovered assets of the Decedent's estate.

36. Given the entitlement of the community of heirs to serve as ancillary co-fiduciaries under SCPA 1604(1)(c) and (2) (assuming, *arguendo*, that UBS AG renounced its appointment and that it also did not reassume its executorial function in Switzerland), someone other than all of its members cannot be appointed unless and until each of them is given notice of his or her right to be appointed and effectively renounces such right. That did not happen here. The Decree did not appoint the members of the community of heirs as ancillary fiduciaries, nor did the Court provide a date by which, if they did not qualify, they would be deemed to have renounced such appointment.

37. Since the mandatory priority afforded to the members of the community of heirs of the Decedent's Swiss estate pursuant to SCPA 1604(1)(c) was not complied with, the Court lacked personal jurisdiction, which necessitates the Decree to be vacated.

iv. **Fourth in the Order of Priority to Ancillary Letters: SCPA 1604(1)(d) & SCPA 1418(1)(a)**

38. Pursuant to SCPA 1604(1)(d), the fourth category in the order of priority belongs to the person entitled to letters of administration c.t.a.

39. Entitlement to letters of administration c.t.a., in turn, is governed by SCPA 1418, which states, in its entirety:

1418. Letters of administration with the will annexed; when and to whom granted

1. If no person is named as executor in the will or selected by virtue of a power contained therein or if at any time there is no executor or administrator with will annexed qualified to act, upon the application of any person who may petition for the probate of the will under 1402 the court must issue letters of administration with will annexed in the following order of priority:

(a) to a sole beneficiary or if he be dead to his fiduciary;

(b) to one or more of the residuary beneficiaries or, if any be dead, to his fiduciary;

(c) if there is no eligible person entitled to letters under subparagraphs (a) and (b) of this subdivision who will accept, the court may issue letters to one or more of the persons interested in the estate or, if any be dead, to his fiduciary.

2. If there is no eligible person entitled to letters under the foregoing subdivision who will accept or an appointment is not made by consent as provided in subdivision 6, letters shall issue to the public administrator or, if there be none for the county, to the treasurer of the county.

3. If none of the persons mentioned in subdivisions 1 and 2 will accept letters the court may issue them to the petitioner or upon petitioner's refusal to accept the same to any person designated by the court.

4. A corporation incorporated within the territorial limits of the United States which is a sole or residuary legatee may act as administrator with will annexed although not specifically so authorized by its charter or by any provision of law.

5. If any person otherwise entitled to letters under subdivision 1 is an infant, incompetent or conservatee the court may issue letters with will annexed to the guardian of the property of the infant, the committee of the property of the incompetent, or the conservator of the property of the conservatee with the same priority as if the infant, incompetent or conservatee had himself been eligible to take letters.

6. Administration may be granted to an eligible person or persons not entitled as beneficiaries upon the acknowledged and filed consent of all of the beneficiaries, provided all the beneficiaries are themselves eligible. The guardian of the property of an infant beneficiary, the committee of the property of an incompetent beneficiary or the conservator of the property of a conservatee beneficiary may so consent.

7. Administration may be granted to a trust company or other corporation authorized to act as fiduciary upon the acknowledged and filed consents of all the beneficiaries inclusive of those who may be non-domiciliary aliens, provided that all such beneficiaries are otherwise eligible. The guardian of the property of an infant beneficiary, the committee of the property of an incompetent beneficiary, or the conservator of the property of a conservatee beneficiary appointed within the state, may so consent.

8. The court may refuse to issue letters of administration with will annexed where distribution of the estate is possible pursuant to the provisions of this act.

40. Under SCPA 1418, the person with the highest priority is a sole beneficiary or, if he be dead, his fiduciary (SCPA 1418(1)(a)). Here, there is no "sole beneficiary" of the Will. Instead, there were multiple beneficiaries of the Will, thus rendering SCPA 1418(1)(a) inapplicable to the Decedent's estate.

v. **Fifth in the Order of Priority to Ancillary Letters: SCPA 1604(1)(d) & SCPA 1418(1)(b)**

41. The fifth highest category in the order of priority to ancillary letters (*i.e.*, the persons with the second highest priority under SCPA 1418) is one or more of the residuary beneficiaries (or, if any be dead, to his fiduciary (SCPA 1418(1)(b)).

42. Here, Ms. Zuckerman is not a residuary beneficiary of the Will, nor was she alleged in Mr. Day's petition to be a fiduciary of any deceased residuary beneficiary of the Will. Thus, the fifth order of priority is inapplicable to Ms. Zuckerman's appointment.

43. Moreover, as discussed *supra* (*see* II.b.iii), the Decree did not appoint the community of heirs (*i.e.*, the residuary beneficiaries) as ancillary fiduciaries, nor did the Court provide a date by which, if they did not qualify, they would be deemed to have renounced such appointment. This deprived the Court of personal jurisdiction, which necessitates the vacatur of the Decree.

vi. **Sixth in the Order of Priority to Ancillary Letters: SCPA 1604(1)(d) & SCPA 1418(1)(e)**

44. The sixth highest category in the order of priority to ancillary letters is one or more persons interested in the estate or, if any be dead, to his fiduciary (SCPA 1418(1)(e)).

45. Here, Ms. Zuckerman is not a beneficiary of any disposition under the will – pre-residuary or residuary – and is not alleged to be otherwise interested in the estate, be it as a creditor or otherwise. Instead, as Mr. Day alleges in his petition, it is Ms. Zuckerman's grandfather, Paul Henry Leffmann, who inherited an 8.5106% share of the Decedent's residuary estate. Assuming, *arguenda*, that allegations made in Mr. Day's petition regarding the devolution of title to Paul Henry Leffmann's assets are correct (in fact, Mr. Day's allegations are unsubstantiated – *see infra* II.c.), upon Paul Henry Leffmann's 2002 death, his assets passed

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to his revocable trust, pursuant to which his son, Paul Harry Leffmann (*i.e.*, Laurel Zuckerman's father), was bequeathed a 8.5106% share in the painting. Given that Paul Harry Leffmann is still alive, Ms. Zuckerman is not a person interested in the Decedent's estate, and the sixth priority for ancillary letters is inapplicable to her appointment.

vii. Seventh in the Order of Priority to Ancillary Letters: SCPA 1604(1)(d) & SCPA 1418(1)(d)

46. The seventh highest category in the order of priority for ancillary letters is "an eligible person or persons not entitled as beneficiaries upon the acknowledged and filed consent of all of the beneficiaries, provided all of the beneficiaries are themselves eligible" (SCPA 1418(6); see SCPA 1418(2)).

47. In the instant case, no consents were filed in connection with the proceeding in which Ms. Zuckerman was appointed ancillary fiduciary of the Will. Thus, the seventh order of priority is not applicable to her appointment.

viii. Eighth in the Order of Priority to Ancillary Letters: SCPA 1604(1)(d) & SCPA 1418(2)

48. If there is neither an eligible person entitled to letters under the aforementioned subdivision 1 of SCPA 1418, nor an appointment made by consent provided for in SCPA 1418(6), then SCPA 1418(2) confers the eighth highest order of priority to ancillary letters on the P.A. (SCPA 1418(2)).

49. It is critical to note that the statute confers no discretion on the Court in connection with the P.A.'s appointment. To the contrary, it states that, under such circumstances, "letters shall issue to the public administrator" (SCPA 1418(2)). Indeed, given the failure of any person listed in SCPA 1418(1) to qualify and the absence of the consent of all

beneficiaries. SCPA 1418(3) would empower the Court to appoint Ms. Zuckerman only if the P.A. had renounced her appointment.

50. Here, not only was no written, acknowledged renunciation of the P.A. filed with the Court: the P.A. was never even issued Citation in Mr. Day's proceeding, and the Court neither appointed the P.A. ancillary fiduciary nor imposed a date by which the P.A.'s failure to qualify would be deemed a renunciation of her appointment. Indeed, Mr. Day's application simply ignored the P.A., which was a violation of SCPA 1418, and which deprived the Court of personal jurisdiction over all necessary parties.

51. As a result of Mr. Day's failure to comply with the provisions of SCPA 1604 and SCPA 1418 in seeking the issuance of ancillary letters to Ms. Zuckerman (discussed *infra.*), this Court did not have the requisite jurisdiction over the necessary parties to issue the Decree.

**c. Mr. Day Failed To Serve Citation
on All Necessary Parties**

52. Pursuant to SCPA 1609, Paragraph 5 of the petition for ancillary probate requires the petitioner to list the persons who are entitled to be served with Citation. Paragraph 5 of Mr. Day's amended petition for ancillary probate failed to list six people (or their fiduciaries) who were so entitled. This was so notwithstanding the fact that these same six people were correctly identified as necessary parties by (a) Mr. Day's attorney, Mr. Popovich, in his sworn attorney affirmation and (b) the family tree submitted in support of his petition. Moreover, the affidavits of service of the Citations confirm that none of such persons or their fiduciaries was in fact served with Citation. Also, Mr. Day did not file any proof of due diligence in locating any of

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such persons or their fiduciaries. The Court neither dispensed with the requirement to serve Citation on such persons nor directed alternative service, such as publication.¹

53. In addition, it is not clear that another necessary party – the trustee of Paul Henry Lettmann’s revocable trust – was served with Citation. The affidavit of Mr. Day’s attorney, Alexander Popovich, Esq., submitted in support of Mr. Day’s petition, states that Paul Henry Lettmann, who was the beneficiary of 8.5106% of the Decedent’s residuary estate, died in the United States leaving his assets to a revocable trust, under which his son, Paul Harry Lettmann, is the beneficiary.² Assuming this is true, the trustee of Paul Harry’s trust has an 8.5106% interest in the replevin cause of action against the Met, and not the beneficiary of such trust. Mr. Day did not give the Court the identity of the trustee of such trust.³ The Citation was not issued to anyone – Paul Harry Lettmann or otherwise – in his or her capacity as trustee of a trust. Thus, the trustee of Paul Henry’s trust could be someone other than Paul Harry, and

¹ The original Petition filed by Mr. Day (copy attached as Exhibit G) listed six beneficiaries required to be served with Citation for whom Mr. Day had no address or information concerning whether they were alive or dead. Mysteriously, in his amended Petition, Mr. Day moved those six persons from Paragraph 5 (i.e., the section that lists persons required to be cited) to Paragraph 6 (i.e., the section that lists persons entitled to receive notice of ancillary probate). No explanation is given for this move. On top of that, the affiant of the Affidavit of Mailing Notice of Ancillary Probate (copy attached as Exhibit H) filed with the Court swore under penalties of perjury that all persons named in Paragraph 6 (including the six persons moved from Paragraph 5) had been served when, in point of fact, this would appear to be an impossibility since the list itself attached to said affidavit of service indicates no addresses for such persons. While this entire procedure is suspicious, one thing is clear: six necessary parties, or their fiduciaries, were not served with Citation in Mr. Day’s ancillary probate proceeding.

² Although Mr. Popovich incorrectly assumes that the nature of Paul Henry Lettmann’s interest in the replevin cause of action against the Met is tangible personal property, in fact, it is intangible personal property. This is a distinction with a difference: Mr. Popovich does not reveal to the Court the identity of the beneficiary of Paul Henry Lettmann’s intangible personal property, and it very well could be someone other than Paul Harry Lettmann. If that were the case, Paul Harry Lettmann would have no interest in the Decedent’s estate.

³ Nor did Mr. Day allege (let alone provide any proof to substantiate any such allegation) that Paul Henry’s will poured over to his revocable trust, that such will was duly admitted to probate, or that title to the replevin cause of action was otherwise assigned or transferred to the revocable trust.

someone other than any of the people actually cited, which would leave at least one more person (i.e. a seventh person) to whom Mr. Day should have caused the Court to issue Citation but did not.

d. Vacatur of Decree

54. It is axiomatic that this Court has the authority to vacate and set aside its own decrees, particularly when jurisdiction was not obtained over a necessary party. *See e.g. In re Huddy*, NYLJ, June 12, 2013, at 27 (Sur. Ct. Bronx County); *Matter of Rank*, 14 AD2d 644 (3rd Dep't 1961).

55. Whether Ms. Zuckerman may properly be appointed as Ancillary Administrator, c.t.a. under SCPA 1604 can only be determined after (a) the Court obtains jurisdiction over all interested parties, and (b) such parties have an opportunity to be heard and accept or renounce their prior right to serve.

56. No request for appointment of a "successor" ancillary administrator CTA is made herein because, in the event the Decree is vacated, there will have been no ancillary administrator c.t.a. to succeed; i.e. the word "successor" would be a misnomer, as there never will have been an ancillary administrator c.t.a. validly appointed in the first place. Moreover, it is unknown as to which, if any, of the persons having a privity right to Ms. Zuckerman may wish to serve. If, after vacatur of the Decree, Mr. Day or any other appropriate person wishes to seek the appointment of an ancillary fiduciary, he, she, or it will have to do so in compliance with the statutory priorities. The burden of seeking appointment of an ancillary fiduciary and ensuring that the process of doing so complies with the statutory requirements clearly does not fall on the Met.

57. Upon information and belief, the names and post office addresses of all persons interested in this proceeding, who are required to receive process upon this application are:

<u>Name and Relationship to Decedent (if any)</u>	<u>Post Office Address</u>	<u>Nature of Interest</u>
Laurel Zuckerman (none)	14 Rue de la Republique Bry-Sur-Marne, France 94360	purported Ancillary Administrator c.t.a.
Nicholas John Day (none)	13 Whinny Brae Broughty Ferry, Dundee, United Kingdom DD5 2HU	petitioned Court to appoint Laurel Zuckerman Ancillary Administrator c.t.a.
Dahlia Damas, Public Administrator of New York County (none)	31 Chambers Street, Suite 311 New York, NY 10007	statutory party
The Metropolitan Museum of Art (none)	1000 Fifth Avenue New York, NY 10028	petitioner of instant proceeding

58. No application was previously made for the relief herein requested.

WHEREFORE, it is respectfully requested that citation issue to the necessary parties to this proceeding directing them to show cause why a decree should not be made:

- (1) vacating this Court's Decree, dated October 18, 2010, which admitted Alice Leffmann's Last Will and Testament to ancillary probate and issued ancillary letters of administration c.t.a. thereon to Laurel Zuckerman; and

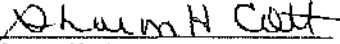
A-105

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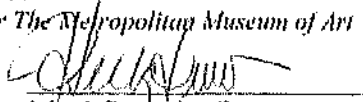
- (2) granting the petitioner such other and further relief as may be just, equitable and proper.

Dated: New York, New York
November 21, 2016

THE METROPOLITAN MUSEUM OF ART

By: 
Sharon H. Cott
*Senior Vice President, Secretary,
and General Counsel*

FARRELL FRITZ, P.C.
1320 RXR Plaza, 13th Floor
Uniondale, New York 11556
(516) 227-0277
Attorneys for The Metropolitan Museum of Art

By: 
John J. Barnosky, Esq.
Joseph T. Laferlita, Esq.
Hillary A. Frommer, Esq.

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VERIFICATION

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

I, SHARON H. COTT, declare:

I am an officer of the Metropolitan Museum of Art, the Petitioner in the above-entitled proceeding. I have read the foregoing petition and know the contents thereof; that the same is true of my own knowledge except as to matters therein stated on information and belief and as to those matters I believe them to be true.

I declare under penalty of perjury under the laws of the State of New York that the foregoing is true and correct.

Sharon H. Cott
SHARON H. COTT

Sworn to before me this
21st day of November, 2016

Hillary A. Frommer
Notary Public

HILLARY A. FROMMER
Notary Public, State of New York
No. 02P16154092
Qualified in New York County
Commission Expires October 23, 2018

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EXHIBIT "A"

A-108

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LAUREL ZUCKERMAN, AS ANCILLARY
ADMINISTRATRIX OF THE ESTATE OF
ALICE LEFFMANN,

Plaintiff,

vs.

THE METROPOLITAN MUSEUM OF ART,

Defendant.

Index No. 16-civ-07665

AMENDED COMPLAINT

JURY TRIAL DEMANDED

Plaintiff, Laurel Zuckerman, as Ancillary Administratrix of the estate of Alice Leffmann, through her undersigned counsel, Herrick, Feinstein LLP, for her Complaint against Defendant, alleges as follows:

NATURE OF THE ACTION

1. This is an action by Laurel Zuckerman, the Ancillary Administratrix of the estate of Alice Leffmann (the sole heir of Paul Friedrich Leffmann) (the "Leffmann estate"), to recover from New York's Metropolitan Museum of Art (the "Museum") a monumental work by Pablo Picasso entitled "The Actor," 1904-1905, oil on canvas, 77 1/4 x 45 3/8 in., signed lower right Picasso (the "Painting"), which was owned by Paul Friedrich Leffmann ("Leffmann" or "Paul"), a German Jew, from approximately 1912 until 1938.

2. In 1937, Paul, who until the advent of the Nazi regime had been a prosperous industrialist and investor, and his wife, Alice, were forced to flee Germany in fear for their lives, after losing their business, livelihood, home and most of their possessions due to Nazi persecution. The feasible escape route at the time was Italy, but any hope of finding a safe haven

from the Nazis in Italy was soon dashed. Shortly after their arrival, Mussolini and his Fascist regime increasingly adopted and implemented the Nazi pattern of rampant anti-Semitic policies and outright physical persecution of Jews, especially of immigrants from Austria and Germany. By 1938, it was clear that remaining in Italy was no longer an option, and, desperate to flee, the Leffmanns were forced to sell their remaining possession of substantial value, The Actor, at a price well below its actual value. They left Italy a few months after the sale, in October 1938, only days after the racist laws expelling foreign Jews from Italy were enacted.

3. The Leffmanns would not have disposed of this seminal work at that time, but for the Nazi and Fascist persecution to which they had been, and without doubt would continue to be, subjected.

THE PARTIES

4. Laurel Zuckerman, the great-grandniece of Paul and Alice Leffmann, received Ancillary Letters of Administration CTA for the estate of Alice Leffmann from the Surrogate's Court of the State of New York, New York County, on October 18, 2010. Pursuant to 28 U.S.C. § 1332(c)(2), since Alice Leffmann was a Swiss domiciliary, the Ancillary Administratrix is deemed to be a citizen of Switzerland as well.

5. Defendant, the Metropolitan Museum of Art, is a New York not-for-profit corporation operating as a public museum located in New York County, New York.

6. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332, because there is complete diversity of citizenship between Plaintiff and Defendant, and the matter in controversy exceeds \$75,000, exclusive of interest and costs.

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7. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(a), (b) and (c), because Defendant is a New York not-for-profit corporation located in New York County and the Painting that is the subject matter of this dispute is located in this judicial district.

8. The Court has jurisdiction to grant the relief requested pursuant to 28 U.S.C. §§ 2201(a) and 2202.

STATEMENT OF FACTS

9. In 1912, Leffmann purchased the Painting, which, until he was forced by the circumstances in Fascist Italy to sell it under duress in 1938, was one of his most valuable acquisitions. From 1912 until at least 1929, Leffmann exhibited the Painting at a variety of exhibitions in Germany, at which he was identified as the owner of the Painting. The Painting was also featured in newspaper articles, magazines and monographs during this time.

10. During this time and up to the start of the Nazi period, Paul and Alice, German Jews, led a wonderful life together in Cologne, Germany. They had sizeable assets, including Atlantic Gummiwerk, a rubber manufacturing company that was one of the leading concerns of its kind in Europe, which Paul co-owned with Herbert Steinberg; real estate investment properties in Cologne (Hohenzollernring 74 and Friesenwall 77); and their home located at Haydnstrasse 13, Köln-Lindenthal. The Leffmanns' home included a collection of Chinese and Japanese artifacts and other artworks, including the masterwork by Pablo Picasso that is the subject of this action.

11. Beginning in 1933, the world the Leffmanns knew in Germany began to shatter. Adolf Hitler came to power and the racist laws directed against Jews quickly began to be enacted and enforced, leading to the adoption of the Nuremberg Laws ("The Laws for the Protection of German Blood and German Honor") on September 15, 1935. The Nuremberg laws deprived all German Jews, including Paul and Alice, of the rights and privileges of German citizenship,

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ended any normal life or existence for Jews in Germany and relegated all Jews to a marginalized existence, a first step toward their mass extermination.

12. The Nuremberg Laws formalized a process of exclusion of Jews from Germany's economic and social life. It ushered in a process of eventual total dispossession through what became known as "Aryanization" or "*Arisierung*," first by takeovers by "Aryans" of Jewish-owned businesses and then by forcing Jews to surrender virtually all of their assets. In this process, all Jewish workers and managers were dismissed, and businesses and corporations belonging to Jewish owners were forcibly transferred from those owners to non-Jewish Germans, who "bought" them at prices officially fixed and well below market value. As a result, the number of Jewish-owned businesses in Germany was reduced by approximately two-thirds from April 1933 to April 1938. By that time, the Nazi regime moved to the final phase of dispossession, first requiring Jews to register all their domestic and foreign assets and then moving to possess themselves of all such assets.

13. On September 16, 1935, the Leffmanns were forced to sell their home to an Aryan German corporation, Rheinsiche Braunkohlensyndikats GmbH Köln; on December 19, 1935, Paul and his Jewish partner, Herbert Steinberg, were forced to transfer ownership of Atlantic Gummiwerk to Aloys Weyers (their non-Jewish minority business partner); and on July 27, 1936, Paul was forced to sell all of his real estate investments to Feuerversicherungsgesellschaft Rheinland AG, yet another Aryan German corporation. In return, Paul had no choice but to accept only nominal compensation. These were, indeed, not real sales at all, but essentially thefts by Nazi designees of substantially everything the Leffmanns ever owned, except for The Actor, which was, at the time, ever so fortuitously for them, located in neutral Switzerland.

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14. Some time prior to their departure from Germany, Paul and Alice had arranged for The Actor to be held in Switzerland by a non-Jewish German acquaintance named Professor Heribert Reiners. Reiners kept The Actor in his family home in Fribourg, where it remained for its entire stay in Switzerland. For this reason only, The Actor was saved from Nazi confiscation or worse.

15. The Leffmanns' world was falling apart piece by piece. Having lost their home, their business and their investment properties, and witnessing the rise to power of the Nazi regime, its adoption of radical racist policies, and the accompanying increase in physical violence against Jews, it became clear that the persecution of Jews in Germany was growing at an alarming rate. Paul and Alice, like so many other German Jews, found themselves faced with the threat of growing violence, the risk of imprisonment and possibly deportation and death. Thus, to avoid the loss of the property they had left -- not to mention their lives -- they began planning their flight from Germany, liquidating their remaining assets in Germany to enable them to survive and escape. Their lives were changed forever as they abruptly lost their wealth and identity and became fugitives.

16. The Leffmanns finally were able to flee Germany in the spring of 1937. By 1937, when the Leffmanns' migration began, the Nazi regime had already put in place its ever tightening network of taxes, charges, and foreign exchange regulations designed to arrogate most, and subsequently all, Jewish-owned assets to itself. Emigrants were only able to leave with a tiny fraction of their assets. The Leffmanns, upon their escape from the Reich, consequently left having been dispossessed of most of what they once owned.

17. The groundwork for, as Reichsmarschall Hermann Göring put it, "getting rid of the Jews, but keeping their assets," had been laid as early as 1934 with a change in the tax law that

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declared that the law be interpreted according to the National-Socialist ideology. This meant that Jews and other persecutees lost all legal recourse against discriminatory tax treatment and legislation. Subsequently, tax instruments became increasingly important in the set of quasi-legal instruments used to strip Jews of their assets. Among these, the flight tax ("*Reichsfluchtsteuer*") was prominent. But even before this, the wave of emigration following Hitler's accession to power had led to a tightening of the flight tax regulations not only by lowering its threshold, but even more important, by authorizing the tax offices to require security deposits as they saw fit. This became one of the more important instruments in the dispossession of emigrants and would-be emigrants, and was used, *inter alia*, to put Jews, especially wealthy ones, under surveillance by the foreign exchange authorities (the "*Devisenstelle*").

18. By the end of 1936 (*i.e.*, shortly before the Leffmanns' emigration), the increasingly precarious foreign exchange position of the Reich caused a further tightening of foreign exchange regulations, which imposed the death penalty on attempts to undercut these regulations and codified the *Devisenstelle's* authority to block assets of persons found to be evading or intending to evade the regulations. Thus, even suspicion of the intention to emigrate led the authorities with ever increasing frequency to require a suspect to put his assets in a blocked emigrant's account, which he could dispose of only with the approval of the *Devisenstelle*. Any legal transfers abroad could be made only from such blocked accounts via the *Deutsche Golddiskontbank*, the government bank through which foreign exchange transactions were made (the "*DeGo*"), at increasingly large discounts. In 1937 the discount charged by the *DeGo* exceeded 80%. This, then, was the environment in which the Leffmanns prepared for their flight from the Reich.

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19. Another measure by which the Reich seized assets from fleeing Jews was the flight tax. Flight tax assessments were based on wealth tax declarations, which referred to wealth in the previous year and which were calculated at 25% of the value of the reported assets. Payment of the flight tax did not give the emigrant any right whatsoever to transfer abroad any of the remaining assets after payment of the tax. In fact, the flight tax amount typically would have been considerably higher than 25% of the assets actually owned at the time of emigration, as those who were persecuted by the Nazis -- as were the Leffmanns -- suffered dramatic financial losses in the period leading up to their emigration, so that their assets at the time of emigration would have been considerably smaller than those on which their flight tax was assessed. The payment of the flight tax was necessary to obtain the no-objection certification of the tax authorities, which in turn was necessary to obtain an exit permit. In the case of the Leffmanns, the flight tax was thus calculated at 25% of the assets they reported on their 1937 tax form, which would have included their total assets held in 1936. The Leffmanns paid this flight tax in the amount of 120,000 to 125,000 RM in cash.

20. While they would have preferred neutral Switzerland over Italy, where the Fascists were already in power and closer relations with Nazi Germany had begun to develop, at the time, a long-term stay in Switzerland would have been virtually impossible. Italy, as opposed to Switzerland, was one of the few European countries still allowing the immigration of German Jews, so that is where they went, hoping that Italy, with its significant Jewish population, would be a safe haven from the Nazi onslaught.

21. In light of the ever-tightening regulations governing the transfer of assets, emigrants sought alternative means of moving their funds abroad. One major avenue involved creating a triangular agreement whereby individuals who owned property outside the Reich and were in

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need of RM would agree to exchange the currency for property, which they would then immediately liquidate upon arrival in the new country. This is exactly the type of transaction the Leffmanns took part in when, in December 1936, they purchased a house and factory in Italy for an inflated price of RM 180,000 from the heirs of Eugenio Usenbenz from Stuttgart and pre-agreed to sell the property back to a designated Italian purchaser for lire, at a considerable loss, upon their arrival in Italy a few months later.

22. In April 1937, the Leffmanns crossed the border into Italy, going first to Milan and then to Florence, where many other German Jewish refugees ended up, and where their newly acquired house and factory were located. Their hope, shared by other Jews emigrating from Austria and Germany to Italy, was that life there could go on in some form of normalcy, which it could not in Cologne.

23. Shortly after their arrival in Italy, as pre-agreed, the Leffmanns sold their newly-acquired properties to an Italian businessman named Gerolamo Valli, who was a business partner of the family from Stuttgart from whom they had originally purchased the house and factory. They sold the properties at a considerable loss -- for 456,500 Lira (or about 61,622 RM) -- and rented a home in Florence at Via Terme 29 and later at Via di San Vito 10.

24. But the Leffmanns' time in Italy was short-lived. It soon became clear that the nightmare from which they had fled was about to engulf them there as well. But moving on meant yet again losing a significant part of their remaining financial assets. The Leffmanns had already lost two-thirds of their initial RM investment in transfer costs, and they now stood to lose much of their remaining cash proceeds as the tight Italian foreign exchange restrictions forced them to seek conversion in "unofficial" ways. Paul was in his late sixties when they arrived in

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Italy; Alice was six years his junior. They were living as refugees, unable to work in Italy, their prior lives destroyed by Nazi persecution, and on the run.

The Growing Influence of Nazi Germany on Mussolini and Italy

25. In April 1936, Italy and Germany had secretly adopted the Italo-German Police Agreement, which provided for the exchange of information, documents, evidence and identification materials by the police with regard to all emigrants characterized as "subversives," which by definition included German Jews residing in Italy. Pursuant to this agreement, the Gestapo could compel the Italian police to interrogate, arrest and expel any German Jewish refugee.

26. By the fall of 1936 and into 1937, things had grown even bleaker for Jews. On November 1, 1936, Mussolini publicly announced the ratification of the Rome-Berlin Axis. By March 1937, Italian bookshops had begun to exhibit and openly sell the notorious book, The Protocols of the Elders of Zion, along with other anti-Semitic writings. During the summer and fall of 1937, the head of the Italian Police, Arturo Bocchini, and Mussolini accepted a proposal from the notorious SS General Reinhard Heydrich, the chief of the Security Service of the Reichsführer (the SS) and the German Secret State Police (the Gestapo), to assign a member of the German police to police headquarters in the ten largest Italian cities, including Florence, where the Leffmanns resided. This facilitated the Nazi efforts to check on "subversives," that is, Jewish individuals.

27. By the fall of 1937, anti-Semitism in Italy, including in the highest levels of the Ministry of the Interior, dashed any illusions about a longer stay in Italy for the Leffmanns. That fall, Germany and Italy began to prepare for Hitler's visit to Italy. In October, the Ministry of the Interior created lists of all German refugees residing in Italy's various provinces. The lists were

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intended to draw clear distinctions between “those who supported the Nazi regime” and “anti-Nazi refugees” or Jews. This was the first time that the Italian Government had explicitly associated all German Jews with anti-Nazi Germans. This marked a turning point in the 1936 Italo-German Police Agreement, with the Gestapo requesting these lists so that it could monitor “subversives” in anticipation of Hitler’s visit. From the beginning of January 1938 until Hitler’s visit in May, the Gestapo received a total of 599 lists from the police throughout Italy’s provinces.

Leffmann’s Sale of the Painting

28. As the situation grew increasingly desperate for Jews living in Italy, it became clear that it would only be a matter of time before the Fascist regime’s treatment of Jews would mimic that of Hitler’s Nazis. Paul and Alice had to make plans to leave, and this would require money. Switzerland was where they wanted to go to escape the horrors of Nazism and Fascism and find a truly safe haven. But, as was well known at the time, passage into Switzerland, permanent or temporary, did not come easily or cheaply. Given the urgency of their situation, Paul began to explore the possibility of selling his masterpiece, *The Actor*, with dealers in Paris. The events following the Austrian *Anschluss* and Hitler’s visit to Italy in May 1938 confirmed the correctness of his actions -- *i.e.*, that they would have had no choice but to turn whatever assets they still controlled into cash.

29. Meanwhile, conditions for Jews in Italy only grew worse. On February 17, 1938, every newspaper in Italy published a Government announcement (“Diplomatic Notice Number 18,” issued on February 16), which stated that “[t]he Fascist Government reserves to itself the right to keep under close observation the activity of Jews newly arrived in our country.”

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30. In March 1938, SS General Heydrich traveled to Rome to meet with the head of the Italian Police, Bocchini, in order to plan for Hitler's visit. Nazi police officials were posted at 13 Police Headquarters in border towns, ports and large cities to conduct interrogations and house searches. These officials, dressed in Nazi uniforms, arrived on April 10-11, 1938. Meanwhile, on March 18, 1938, the Italian Ministry of the Interior informed prefects in border provinces that "ex-Austrian Jewish subjects" should be denied entry into Italy.

31. Also in March 1938, the Italian Minister of Foreign Affairs informed the U.S. Ambassador to Italy that Italy would not be participating in the international initiative to "facilitate" the emigration of "political refugees" from Austria and Germany. Italian newspapers made clear that "political refugees" was a synonym for Jews.

32. In April 1938, in the face of the growing Nazi persecution spreading across Europe and into Italy, Paul escalated his efforts to liquidate The Actor.

33. In September of 1936, after he had been forced by the Nazis to part with nearly everything he owned, Leffmann had rejected an offer from the notorious art dealer, C.M. de Hauke of Jacques Seligmann & Co. (whom the U.S. State Department later identified as a trafficker in Nazi-looted art) to sell The Actor. Nearly two years later, on April 12, 1938, Leffmann, in an even more desperate state, reached out to de Hauke asking him if he would be interested in purchasing the Painting.

34. Just days after writing to de Hauke, the situation in Italy grew even worse. From April 24-26, General Heydrich, SS Reichsführer Heinrich Himmler (whom Hitler later entrusted with the planning and implementation of the "Final Solution") and SS General Josef "Sepp" Dietrich, the commander of Hitler's Leibstandarte (Hitler's personal army), went to Rome to complete preparations for Hitler's visit. For three weeks in April and May 1938 there were over

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120 Gestapo and SS officers in Italy -- primarily in Florence, Rome and Naples. The Gestapo officials and Italian police continued investigations and surveillance of "suspicious persons" until the end of Hitler's visit, arresting at least 80 people in Florence. The arrests were carried out by the Italian police. Many German Jewish residents fled in anticipation, and as a result, of these arrests.

35. On May 3, Adolf Hitler arrived in Italy for his official state visit. It was a momentous occasion for Mussolini, and the Italian people turned out in the tens of thousands to greet the German leader. From May 3 through May 9, 1938, Hitler traveled to Rome, Naples and Florence. This was no typical state visit. Mussolini, anxious to strengthen the Axis alliance, made sure that Italy spared no expense in putting on its grandest show for Hitler. The streets of these Italian cities were covered in thousands of Nazi swastika flags, which flew alongside Italy's tricolor; flowerbeds were decorated in the shape of swastikas and photographs of Mussolini and Hitler were made into postcards and displayed in shop windows. Parades and military displays in honor of Hitler, attended by thousands of Italians, young and old, took place in every city he visited. In Florence, the last city visited by Hitler on May 9th, city officials made an official postmark that commemorated Hitler's visit. Mail sent during that time was stamped "1938 Il Führer a Firenze" and decorated with swastikas.

36. Hitler's visit made clear that the situation in Italy for Jews was tense and the fear palpable. For Leffmann, the time to flee Italy was quickly approaching, so he continued to try to sell the Painting through de Hauke. Trying to raise as much cash as possible for the flight and whatever the future would bring, Leffmann responded to a letter from de Hauke, telling him that he had already rejected an offer obtained through another Paris dealer (presumably Käthe Perls)

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for U.S. \$12,000 (net of commission). It is clear from the letter that Leffmann was desperately trying to improve his leverage to maximize the amount of hard currency he could raise.

37. Violence was increasing and the persecution of Jews was on the rise. All foreign Jews in Italy risked arrest, and had good reason to fear possible deportation and death. Paul and Alice were in fear of their liberty and their lives. There was no time left. So just days after telling de Hauke that he had rejected Mrs. Perls' low offer, in late June 1938, Leffmann sold the Painting at the very price he told Perls and de Hauke he would not consider. He finally accepted Käte Perls' offer of U.S. \$13,200 (U.S. \$12,000 after a standard 10% selling commission), who was acting on behalf of her ex-husband, Hugo Perls, also an art dealer, and art dealer Paul Rosenberg, with whom Perls was buying the Painting.

38. On July 26, 1938, Frank Perls, Käte's son, who was also a dealer, wrote to automobile titan Walter P. Chrysler Jr., asking if he would be interested in purchasing *The Actor*. Obviously aware of the "sensitivity" of his overture, having just acquired a Picasso masterpiece from a German Jew on the run from Nazi Germany living in Fascist Italy for a low price that reflected the seller's desperate circumstances and the extraordinary prevailing conditions, he described the work as having been purchased by Mrs. Perls from "an Italian collector" -- an outright lie.

39. In July 1938, the Leffmanns, as German Jews, submitted their "Directory of Jewish Assets" forms detailing all of their assets, which the Reich required all Jews (even those living abroad) to complete. The penalties for failing to comply with this requirement included "fines, incarceration, prison, seizure of assets."

40. Meanwhile, the plight of the Jews in Italy deteriorated even further. In August 1938, enrollment of foreign Jews in Italian schools was prohibited. A Jewish census, in which the

Leffmanns were forced to participate, was conducted in preparation for the Italian racial laws, which were soon to follow. A legal definition of what constituted a "Jew" was considered, and discriminatory legislation was drafted. The Italian government increased surveillance of Jews because of the fear that Jews would transfer their assets out of Italy or emigrate and take their assets with them. A series of anti-Semitic publications were released, among them the infamous "*Manifesto degli scienziati razzisti*" ("Manifesto of the Racial Scientists"), which attempted to provide a scientific justification for the coming racial laws, and the venomous magazine, "*La difesa della razza*" ("The Defense of the Race"). In addition, a number of regional newspapers published lists of many of the names of Jewish families residing in Florence.

41. On September 7, 1938, the first anti-Semitic racial laws were introduced in Italy, including "Royal Enforceable Decree Number 1381," which was approved by the Council of Ministers on September 1st and was published in daily newspapers on September 2nd. It was signed by the King on September 7th and was published in the "*Gazzetta Ufficiale*" on September 12th. With this Enforceable Decree, all "alien Jews" were forbidden from residing in Italy. All Jews who arrived in Italy after January 1, 1919 had to leave Italy within six months (i.e., by March 12, 1939) or face forcible expulsion. Bank accounts opened in Italy by foreign Jews were immediately blocked. At that point in 1938, Italy's anti-Jewish measures had become extremely draconian, and in some instances had become even harsher than the corresponding measures enacted in Germany.

42. The Leffmanns had no choice but to prepare for immediate departure. Paul had sold The Actor not a moment too soon. Switzerland was the obvious destination. But Switzerland, which already had strict border controls, became even more difficult to enter beginning in 1938. In fact, it was about the worst time to try to enter Switzerland. Switzerland, following the

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incorporation of Austria into the Reich, imposed visa requirements on holders of Austrian passports on March 28, 1938, and in April began negotiations with the Germans regarding the introduction of the notorious "J" stamp. On August 18-19, 1938 the Swiss decided to reject all refugees without a visa; on October 4, 1938, with an agreement reached on the adoption of the "J" stamp, they imposed visa requirements on German "non-Aryans." Receiving asylum was virtually impossible, and German and Austrian Jews could only enter Switzerland with a temporary residence permit which, given the strict controls, and asset requirements imposed by the Swiss government, was not easy to obtain.

43. Sometime before September 10, 1938, however, the Leffmanns managed to obtain a *Toleranzbewilligung* (a tolerance or temporary residence visa) from Switzerland, valid from September 10, 1938 to September 10, 1941. In October 1938, just days after the enactment of the racial laws expelling them from Italy, the Leffmanns fled yet again, this time to Switzerland, where they were allowed to stay only temporarily.

44. By the time the Leffmanns arrived in Switzerland, the *Anschluss* and other persecutory events had triggered a rising wave of flight from the Reich. Consequently, Swiss authorities required emigrants to pay substantial sums through a complex system of taxes and "deposits" (of which the emigrant had no expectation of recovery).

45. In October 1938, all German Jews were required to obtain a new passport issued by the German government stamped with the letter "J" for Jude, which definitively identified them as being Jewish. As German citizens who required a passport to continue their flight, the Leffmanns had no choice but to comply.

46. The Leffmanns temporarily resided in Bern, Switzerland, but, unable to stay, prepared to flee yet again, this time to Brazil. In addition to bribes that were typically required to

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obtain necessary documentation, Brazil would only provide visas for Jews who could transfer more than 400 contos (USD \$20,000) to the Banco do Brasil. On May 7, 1941, the Leffmanns, still on the run, immigrated to Rio de Janeiro, Brazil, where they lived for the next six years. But even in Brazil, they could not escape the effects of the ongoing war. All German residents living there, including the Leffmanns, were forced to pay a levy imposed by the Brazilian government of 20,000 Swiss Francs (or about U.S. \$4,641).

47. Given the various payments required by Switzerland, as well as those that the Leffmanns would need to enter Brazil, the Leffmanns depended on the \$12,000 (or approximately SF 52,440 in 1938) they received from the sale of The Actor, as it constituted the majority of the Leffmanns' available resources in June 1938. Had the Leffmanns not fled for Brazil when they did, they would have likely suffered a much more tragic fate at the hands of the Nazis regime and its allies.

48. The Leffmanns were not able to return to Europe until after the War had ended. In 1947 they settled in Zurich, Switzerland.

49. Paul Leffmann died on May 4, 1956 in Zurich, Switzerland at the age of 86. He left his entire estate to his wife, Alice Brandenstein Leffmann.

50. Alice Leffmann died on June 25, 1966 in Zurich, Switzerland at the age of 88. She left her entire estate to 12 heirs (all relatives or friends).

The Ancillary Estate of Alice Leffmann

51. In or about August 26, 2010, Nicholas John Day, the Executor named in the will of Alice Anna Berta Brandenstein, a legatee named in the will of Alice Leffmann, submitted a Petition for Ancillary Probate for the estate of Alice Leffmann in the Surrogate's Court of the State of New York, New York County authorizing Laurel Zuckerman to receive Ancillary

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Letters of Administration CTA of the estate. On October 18, 2010, Laurel Zuckerman received Ancillary Letters of Administration CTA and was named Ancillary Administratrix by the Surrogate's Court of the State of New York, New York County.

The Museum's Acquisition and Possession of the Painting

52. The immediate history of the Painting after it was purchased by Perls and Rosenberg in June of 1938 is unclear, but it is known that after the purchase, the Painting was loaned by art dealer Paul Rosenberg to the Museum of Modern Art ("MoMA") in New York in 1939. In the paperwork documenting the loan, Rosenberg requested that MoMA insure the Painting for \$18,000 (a difference of \$6,000 or a 50% increase over what had been paid to Leffmann less than a year earlier).

53. Sometime prior to October 28, 1940, the Painting was consigned for sale by Rosenberg to the well-known M. Knoedler & Co. Gallery in New York, New York. On November 14, 1941, M. Knoedler & Co. sold the Painting to Thelma Chrysler Foy for \$22,500 (a difference of U.S. \$9,300 or a 70% increase from the price paid to Leffmann).

54. Thelma Chrysler Foy donated the Painting to the Museum in 1952, where it remains today. The Museum accepted this donation.

55. As a matter of law and public policy, good title to the Painting never passed from Leffmann to Perls and Rosenberg, and thus neither Perls, Rosenberg nor Foy could convey good title to the Painting. Therefore, the Museum never acquired good title to the Painting, and it remains the property of the Leffmann estate.

56. The Museum, given its resources, relationships, expertise, and status as a museum that holds its collection in the public trust, should have discovered, through due diligence,

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Leffmann's ownership up and until 1938, and the circumstances under which he was compelled to dispose of the Painting because of Nazi and Fascist persecution.

57. Nonetheless, the Museum's published provenance for the Painting was manifestly erroneous when it first appeared in the Museum's catalogue of French Paintings in 1967. Instead of saying that Leffmann owned the Painting from 1912 until 1938, it read as follows: "P. Leffmann, Cologne (in 1912); a German private collection (until 1938) . . .", thus indicating that Leffmann no longer owned the Painting in the years leading up to its sale in 1938.

58. This remained the official Museum provenance for the Painting for the next 45 years, including when it was included on the Museum's website as part of the "Provenance Research Project," which is a section of the website that includes all artworks in the Museum's collection that have an incomplete Nazi-era provenance.

59. From 1967 to 2010, the provenance listing was changed numerous times. It continued to state, however, that the Painting was part of a German private collection, and not that it was owned by Leffmann continuously from 1912 until 1938.

60. In connection with a major exhibition of the Museum's Picasso holdings in 2010 entitled, "Picasso in the Metropolitan Museum of Art", the provenance was changed yet again. The forward to the exhibition catalogue by the Museum's director, Thomas P. Campbell, states that "[m]ore than a dozen members of our curatorial and conservation staff devoted the last year to an intensive study of the Museum's works by Picasso. . . Thanks to these extensive studies, for example, we have been able to confirm the authorship of one painting and to better establish the early ownership and exhibition history of many other works." Picasso in the Metropolitan Museum of Art, The Metropolitan Museum of Art, New York, 2010, p. vii.

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61. Despite purportedly careful examination, as of 2010, the provenance of the Painting continued to erroneously list the "private collection" subsequent to the Leffmann listing.

62. All of these versions of the Painting's provenance were incorrect. Paul owned the Painting from 1912 until its "sale" under duress to Perls in June 1938. The Museum's asserted explanation for the forty-five years of erroneous provenance only underscores its improper conduct when it first acquired the Painting. The Museum asserts that the genesis of the original provenance entry in 1967 was that, some fifteen years after acquiring the Painting, the Museum's curators finally asked Perls where he had obtained the Painting and that his answer was that he had bought it in 1938 from a "German professor" in Solothurn, Switzerland who had been "thrown out by Nazis." (Perls allegedly could not remember the name of the German collector when asked in the 1960's.) Therefore, at least at the time of the cataloguing, red flags should have been raised for the Museum. It should have tried to correct its error by then investigating the acquisition of the Painting, especially because Perls already said that he could not remember the name of the German collector and, more pointedly, that the seller had been "thrown out" of Germany by the Nazis. But obviously no investigation was conducted in 1967, and the provenance published in 1967, and for many years thereafter, was erroneous.

63. In October 2011, only after extensive correspondence with Plaintiff, the Museum revised its provenance yet again. The revised provenance omitted the reference to the mysterious private German collector who had purportedly owned The Actor from 1913-1938 and finally acknowledged Leffmann's ownership through 1938 and his transfer of it during the Nazi era.

64. The Museum's conduct ignored directives and warnings issued by the U.S. Government. The Museum had specifically been warned about accepting or buying art misappropriated during the Nazi era. As early as 1945, the American Commission for the

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Protection and Salvage of Artistic and Historic Monuments in War Areas (also known as the "Roberts Commission") issued a circular, addressed "to museums, art and antique dealers and auction houses," which emphasized the importance of bringing "specific examples of looting of works of art or cultural material [] to light as soon as possible," and which encouraged museums and others to inform the Roberts Commission of objects of "special artistic importance" that had "obscure or suspicious" provenances. The Commission also issued the following statement: "[i]t is, of course, obvious that no clear title can be passed on objects that have been looted from public or private collections abroad." In or about 1947, the Department of State sent American museums, as well as universities, libraries, art dealers and book sellers, another bulletin, in which it highlighted the responsibility of museums and other American institutions to exercise "continued vigilance" in identifying cultural objects with provenances tainted by World War II. The directive underscored the need for museums to notify the Secretary of State of any objects identified as lacking a clear title. In 1950, the College Art Association of America reprinted the directive in *College Art Journal*, and in 1951, the American Federation of Arts reprinted the directive again in *Magazine of Art*.

65. The Museum's conduct was also inconsistent with the principles espoused by the American Alliance of Museums ("AAM"), by which the Museum is accredited, and the Association of Art Museum Directors ("AAMD"), to which the Museum is a member — principles closely correlated to the landmark *Washington Conference Principles on Nazi-Appropriated Art*. For example, recognizing that a museum's mission is to serve the public and that its responsibility to practice ethical stewardship is paramount, AAM's "Standards Regarding Unlawful Appropriation of Objects During the Nazi Era" dictates that museums: (i) identify all objects in their collections that were created before 1946 and acquired by the museum after 1932,

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that underwent a change of ownership between 1932 and 1946, and that were or might reasonably be thought to have been in continental Europe during those dates; (ii) make currently available object and provenance (history of ownership) information on those objects accessible; and (iii) give priority to continuing research as resources allow.

Plaintiff Demands the Return of the Painting and the Museum Refuses

66. On September 8, 2010, Plaintiff's attorneys, Herrick, Feinstein LLP, wrote to the General Counsel of the Museum, demanding the return of the Painting, but the Museum failed and refused to deliver the Painting to Plaintiff. The Painting remains in the possession of the Defendant through the filing of this Complaint.

67. On February 7, 2011, the parties entered into a standstill agreement tolling any statute of limitations as of February 7, 2011. Such agreement was thereafter amended several times to terminate on September 30, 2016. The final amendment of the standstill agreement terminated on September 30, 2016. The action is therefore timely.

FIRST CLAIM

(For Roplevin)

68. Plaintiff repeats and realleges each of the allegations contained in the preceding paragraphs of this Complaint as if fully set forth herein.

69. The Leffmann estate is the rightful owner of the Painting, and Plaintiff, as Ancillary Administratrix of the Leffmann estate, is thus entitled to recover sole possession of the Painting.

70. The Painting is a unique and irreplaceable work of art.

71. Plaintiff demanded the return of the Painting. Defendant failed and refused to deliver the Painting to Plaintiff.

72. Plaintiff is entitled to the immediate return of the Painting.

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SECOND CLAIM

(For Conversion)

73. Plaintiff repeats and realleges each of the allegations contained in the preceding paragraphs of this Complaint as if fully set forth herein.

74. The Leffmann estate is the rightful owner of the Painting, and Plaintiff, as Ancillary Administratrix of the Leffmann estate, is thus entitled to recover sole possession of the Painting.

75. Plaintiff demanded the return of the Painting. Defendant failed and refused to deliver the Painting to Plaintiff.

76. In refusing to return the Painting when demanded, Defendant converted and appropriated the Painting for its own use in complete disregard and derogation of the Leffmann estate's rights, title and interest to the Painting.

77. As a result of Defendant's wrongful conduct, the Leffmann estate has suffered damages, and Plaintiff is entitled to an award, in an amount to be determined at trial, but estimated to be in excess of \$100 million.

THIRD CLAIM

(For Declaratory Judgment)

78. Plaintiff repeats and realleges each of the allegations contained in the preceding paragraphs of this Complaint as if fully set forth herein.

79. The Leffmann estate is the rightful owner of the Painting, and Plaintiff, as Ancillary Administratrix of the Leffmann estate, is thus entitled to the immediate possession of the Painting.

80. Defendant does not have good title to the Painting.

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81. Plaintiff demanded the return of the Painting. Defendant failed and refused to deliver the Painting to Plaintiff.

82. Plaintiff is entitled to a judgment declaring that the Leffmann estate is the sole owner of the Painting.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendant as follows:

- a) On the First Claim, directing that Defendant immediately deliver the Painting to Plaintiff;
- b) On the Second Claim, in the alternative, awarding Plaintiff damages in an amount to be proven at trial, but estimated to be in excess of \$100 million;
- c) On the Third Claim, declaring that the Leffmann estate is the rightful owner of the Painting and that Plaintiff, as Ancillary Administratrix of the Leffmann estate, is entitled to immediate possession of the Painting;
- d) Awarding Plaintiff fees and costs pursuant to Fed. R. Civ. P. 54(d); and
- e) Awarding any such other and further relief as the Court deems just and proper.

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Dated: New York, New York
November 2, 2016

Respectfully submitted,

HERRICK, FEINSTEIN LLP

By: /s/ Lawrence M. Kaye
Lawrence M. Kaye
Howard N. Spiegler
Ross L. Hirsch
Yael M. Weitz

2 Park Avenue
New York, New York 10016
Tel: (212) 592-1410
Fax: (212) 592-1500

Attorneys for Plaintiff
Laurel Zuckerman, Ancillary Administratrix
of the estate of Alice Leffmann

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EXHIBIT "B"

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At a Surrogate's Court of the State of New York held in and for the County of New York at New York, New York, on October 18, 2010

New York County Surrogate's Court
DATA ENTRY
Date: _____

PRESENT: HON. Kristin Berch Allen, Surrogate

IN THE MATTER OF THE ANCILLARY PROBATE OF THE LAST WILL AND TESTAMENT OF

ALICE LEFFMANN

a/k/a
ALICE BRANDENSTEIN-LEFFMANN

Deceased.

DECREE GRANTING ANCILLARY PROBATE

File No. 2010-2964

A copy of the record of the will of ALICE LEFFMANN, deceased, late of Zurich, Switzerland, and of the judgment, decree or order of the Regional Court of Zurich, Switzerland, entered the 15th day of July, 1986, duly admitting the same to probate, authenticated as prescribed by law in Switzerland, having been filed in this court on the 24th day of August, 2010 (together with an instrument duly executed by NICHOLAS JOHN DAY, the Executor named in the will of ALICE ANNA BERTA BRANDENSTEIN, a legatee named in the will of ALICE LEFFMANN, authorizing LAUREL ZUCKERMAN to receive ancillary letters of administration c.l.a. upon the estate of said deceased, and an instrument duly executed by LAUREL ZUCKERMAN verifying the petition and accepting her receipt of ancillary letters of administration c.l.a. upon the estate of said deceased) and NICHOLAS JOHN DAY having therewith presented to and filed in this court his verified petition praying for a decree awarding ancillary probate and issuance of ancillary letters of administration c.l.a., and the Surrogate having ascertained to her satisfaction that there are not creditors or persons claiming to be creditors of the said decedent residing within the State of New York.


Now, on motion of Alexander M. Popovich, attorney for NICHOLAS JOHN DAY and the ESTATE OF ALICE LEFFMANN,

It is Ordered and Decreed that the said will be admitted to ancillary probate and ancillary letters of administration c.l.a. be issued to LAUREL ZUCKERMAN taking and subscribing the statutory oath or affirmation and qualifying as prescribed by law, *and*

HF 6990793v.4 #14061/0001

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It is Further Ordered and Decreed that none of the property of the decedent shall be removed from this state until sufficient evidence has been given to the State Tax Commission to enable it to ascertain the estate tax herein.



Surrogates *Surrogates*

HP 8800793v.4 #14861/0001

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EXHIBIT "C"

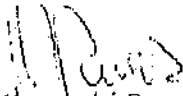
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Certification

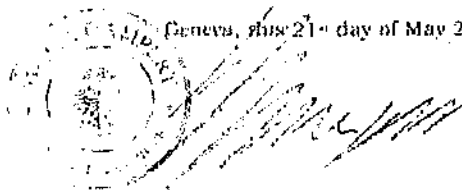
This photocopy is a true and accurate
record of all parts of the reading of the will here
The will has 2 pages
Zurich, 11 July 1966
Regional Court of Zurich
pm [Signature]

I hereby certify that the present is a true and accurate translation of the original
in German


Marc-André Renold
Attorney-at-law
Geneva, Switzerland

Geneva, May 21st, 2010

Seen by the undersigned, Mr Michel CAMPERT, a duly authorized Notary
public in Geneva, for legalization exclusively of the above signature of Mr. Marc-
André RENOLD which is the same as the specimen of signature deposited with our
office


Geneva, this 21st day of May 2010

11/30/16

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Certification

This photocopy is a true and accurate
copy of all parts of the original (- 4 - pages).
Zurich, 5 November 2008

REGIONAL COURT OF ZURICH

Case no. 956/86

Decree of the single judge in the non-contentious
legal matter

(Vice President Dr R. Scherrer)

of 5 December 1986

In the matter of the estate of

Widow Alice Leffmann-Brandenstein,
born on 19 September 1877, of German nationality,
died on 25 June 1966, last resident at Steinwiesstrasse 8, 8032 Zurich

regarding the reading of the will
the following resulted:

- I. On 7 July 1966 Schweizerische Bankgesellschaft, Vermögensverwaltung, Bahnhofstr. 45, 8021 Zurich, submitted a holographic will of the testator dated 14 November 1962, open, for reading.
- II. Pursuant to affirmation in connection with an affidavit submitted by the testator herself dated 28 April 1966 before the notary's office of the District of Zurich (Altstadt) and authentic private details, the statutory heirs are

from the parental relationship.

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1 the children of the brother Daniel Friedrich (known as Fritz) Brandenstein who died on 17 April 1946, from his marriage to Anna Sophie Flora, née Frank:

- a Dr Berta Anna Alice Brandin (née Brandenstein), born on 4 January 1910, Beachcroft, Berwick Rd., Shrewsbury, Shrops, England.
- b Pierre Werner Brandin (né Werner Brandenstein), born on 30 September 1912, 35, rue de la République 95-Montmorency/France.

2 the children of the sister Philippine Brandenstein who was born on 16 June 1873 and died on 3 April 1933, from her marriage to Julius Loewendahl:

- a Gerda Regina Kraayn-Loewendahl, born on 20 November 1898, High Road, Bramley, Johannesburg, S.A.U.
- b Walter Simon Dahl, born on 19 January 1908, Hölderlin-Str 7 D-5 Cologne-Bayenthal

iii The reading of the will took place on 4 August 1966 in the absence of the statutory heirs, the appointed heir Sophie Brandenstein and the executor

In the will the testator declares at the outset all prior dispositions null and void (with the exception of the lists of testamentary gifts not submitted).

She then makes her bequests

As heirs to her estate the testator appoints the following persons, for specific parts, (further described in the will).

- 1 Mrs Sophie Brandenstein, Güterstr. 279, 4000 Basel,
- 2 Miss Dr Alice Branden, (heir 1/1a),

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- 3 Pierre Brandin (heir II/1/b).
- 4 Paul Leffmann junior, 480 Lee Road, Nonhbrook, Ill./USA.
- 5 Walter Dahl (heir II/2/b).
- 6 Mrs Marga Merrill, Scarsdale-New York, Eton-Hall, Apt 2F
- 7 Mrs Nora Gorner, 27, Clermont, Av.Mount Vernon New York.
- 8 Mrs Gerda Krayn (heir II/2/a).
- 9 Prof Wolfgang Braunfels, Eupenerstr 137, D-51 Aachen.
- 10 Michael Braunfels, Drensdorferstr 40, D-5 Cologne, Radenhat.
- 11 Mrs Marianne Dischgans, Sussemühle b/D-777 Ueberlingen.
- 12 Miss Irene Braunfels, auf dem Stein 21, D-777 Ueberlingen

Schweizerische Bankgesellschaft, Bahnhofstr. 45, 8021 Zurich is appointed executor. It accepted its appointment as executor on 15 July 1966 which must be noted.

In all other respects reference is made to the wording of the will

The single judge
decreed:

- 1 The parties shall each be served a photocopy of the will. Objections hereto shall be made within one month, calculated from receipt of this decree. here, otherwise the statutory and appointed heirs set out under III/1 - 12 of this decree may request that a certificate of inheritance be issued.

The original will shall remain in the court archives.

- 2 It is noted that Schweizerische Bankgesellschaft, Bahnhofstr. 45, 8021 Zurich, is prepared to act as executor

- 3 The matter is declared closed. The estate shall be liquidated by the executor.
- 4 The court fee is Fr. 100.00. The further costs are as follows.

Fr. 4.00	summons fees
Fr. 106.50	administrative costs
Fr. 50.20	costs of serving and postage
Fr. 9.50	certificates
Fr. 10.10	cash expenditure
- 5 The costs shall – until succession to the estate by the heirs – be invoiced for the account of the estate to the executor
- 6 Written notification in each case in return for advice of delivery or return receipt to:
 - a) the statutory heirs
 - b) the appointed heirs pursuant to III/1,4,6,7,9-12 of this decree,
 - c) the executor,
 - d) the Guardianship Authority of the City of Zurich (without costs)
 - e) the beneficiaries by way of separate notification.
- 7 Appeals against this decree can be submitted in writing in duplicate within 10 days, calculated from the written notification, stating grounds and attaching the decree and any proof, to the Second Civil Panel of the Supreme Court of the Canton of Zurich.
(Contestation of the will itself shall not be by way of an appeal but by way of filing a claim with the office of the justice of the peace of the last place of residence of the testator.)

Regional Court Office Zurich

PP
[Signature]
(Weizel)

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(Handwritten document)

Holographic will

I the undersigned, Ms Alice Leffmann, née Brandenstein, born on 19 September 1877, resident in Zurich 7, Steinwiesstrasse 8 Pension Tiefenau, hereby declare the following for the event of my death:

i. Firstly I declare all prior dispositions made by me null and void with the exception of my lists of testamentary gifts. The testamentary gifts shall be handed over free from inheritance tax

ii. The following testamentary gifts shall be made from my estate:

1. Mrs Annelis Woester	CHF 6,000.00
2. Miss Emi Schuler	CHF 3,000.00
3. Mrs Prof. Hilde Hintzsche	CHF 3,000.00
4. Mr Dr Fritz Baus	CHF 4,000.00
5. Mrs Käthe Gay	CHF 1,000.00
6. Mrs Christine Ebach	CHF 500.00
7. Mr Willi Noll	CHF 500.00
8. Mrs Maria Klein, Pension Tiefenau	CHF 5,000.00
9. Mrs Anne Groni, Pension Tiefenau,	CHF 500.00
10. Miss Louise Krahenbühl, Pension Tiefenau,	CHF 800.00

In the event that legatees die before me the legacy concerned shall lapse.

iii

My entire remaining estate shall be bequeathed in the following parts to the following persons:

1	Mrs Sophie Brandenstein, Basel	6 parts
2	Miss Dr Alice Branden	6 parts
3	Mr Pierre Brandin	6 parts
4	Mr Richard Lefimann's son Paul	4 parts
5	Mr Walter Dahi	3 parts
6	Mrs Marga Merrill	4 parts
7	Mrs Nora Gomer	4 parts
8	Mrs Gerda Kräyn	3 parts
9	Mr Prof Wolfgang Braunfels	2 parts
10	Mr Michael Braunfels	3 parts
11	Mrs Marianne Dischgans	3 parts
12	Miss Irene Braunfels	3 parts

In the event that one or more than one of the above-mentioned persons should die before me, the corresponding legacy shall lapse, i.e. it shall accrue to the remaining beneficiaries.

IV.

I instruct the executor to conclude a fixed grave maintenance agreement with the Cemeteries Office of the City of Zurich. (As of 11th year evergreen planting.)

V.

I appoint Schweizerische Bankgesellschaft in Zurich executor of my will.

Zurich, 14 November 1962

Alice Lefimann

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BEZIRKSGERICHT ZÜRICH

Beglaubigung

Geschäft Nr. 356/66

Diese Photokopie gibt das Original (4 Seiten) in allen Teilen richtig wieder.
Zürich, den 5. Nov. 2008

BEZIRKSGERICHT ZÜRICH
Auftrag Gerichtsschreiber
[Signature]

Verfügung des Einzelrichters in nichtstreitiger Rechtssache

Vizepräsident Dr. R. Scherrer

vom 5. Dezember 1966

In Sachen des Nachlasses von

Witwe Alice L e f f m a n n - Brandenstein,
geboren 19. September 1877, deutsche Staatsangehörige,
gestorben am 25. Juni 1966, wohnhaft gewesen Stein-
wiesstrasse 3, 8032 Zürich,

betreffend Testamentseröffnung
hat sich ergeben:

I. Am 7. Juli 1966 reichte die Schweizerische Bankgesellschaft, Vermögensverwaltung, Bahnhofstr. 45, 8021 Zürich, eine eigenhändige letztwillige Verfügung der Erblasserin vom 14. November 1962, offen, zur Eröffnung ein.

II. Nach urkundlicher Feststellung in Verbindung mit einer von der Erblasserin selbst abgegebenen eidesstattlichen Erklärung vom 26. April 1966 vor dem Notarist des Kreises Zürich (Altstadt) und glaubwürdigen privaten Angaben sind die gesetzlichen Erben

aus der eiterlichen Verwandtschaft:

- Pierre Brumste (1928 - 1991)
- Prof. Jacques Bresson, 1928 - 2008, verstorben am 11. April 2008 in Paris (1928 - 2008)
- Achille Lohé (1888 - 1974)
- Jean Marie Bresson (1928 - 2008), verstorben am 11. April 2008 in Paris (1928 - 2008)
- Frau Genevieve Bresson (1928 - 2008)
- Frau Germaine Kruger (1928 - 2008)
- Prof. Pauline Bresson (1928 - 2008)
- Michael Brumste, 1928 - 2008, verstorben am 11. April 2008 in Paris (1928 - 2008)
- Frau Marianne Bresson, verstorben am 11. April 2008 in Paris (1928 - 2008)
- Mlle. Genevieve Bresson, auf der Straße 11, 10777 Berlin.

Der Willensvollstreckende wird die Sekretariatsstelle Bankgesellschaft, Buchhofstr. 42, 10621 Berlin, beantragt, diese bei der Handhabung der Bankgesellschaft am 1. Juli 1986 entgegenzunehmen, was voraussetzt ist.

In Übrigen wird auf den Bescheid der Vollstreckungsbehörde verwiesen.

Der Vollstreckende
 ist
 M. J. Bresson

1. Bei Beauftragung wird je eine Fotokopie des Testaments beigefügt. Einreichungsgang und weitere Einzelheiten, von denen dieses Verfügen, an demselben, ist weiter zu verstehen, können von dem Antragsteller durch die Beauftragung des Vollstreckenden mitgeteilt werden. Die Beauftragung eines Vollstreckenden ist nicht erforderlich.

Der Vollstreckende ist für die Beauftragung zu beauftragen.
 2. Es wird beantragt, dass die Vollstreckungsbehörde die Beauftragung des Vollstreckenden mitteilt, oder die Vollstreckungsbehörde zu beauftragen ist.

Eigenthümige, letztwillige Verfügung

Dah, die unterzeichnete Frau Thide Lehmann geb. Brandenstein, geb. am 19. September 1858, wohnhaft im Kirchhof 4, Steinwedelhof 1, Pension Tiedeman bestimme hiermit für den Fall meines Ablebens was folgt:

I.
Mein Leibes Erbe ich alle von mir bis heute erworbenen Testamente als ungelteig und für meine Söhne über die Nachlassverwaltung die Nachlassverwalter sind abschließend und abschließend.

II.
Als meinen Nachlass sind folgende Nennungen anzunehmen:
Frau Amelie Wörscher Fr. 6'500.-
Frau Maria Schuler Fr. 2'000.-
Frau Prof. Thide Hindenke Fr. 3'000.-
Frau Dr. Frida Peters Fr. 4'000.-
Frau Thide Gey Fr. 1'000.-
Frau Christine Pöschel Fr. 500.-
Frau Thide Koll Fr. 500.-
Frau Maria Ellen Pension Tiedeman Fr. 500.-
Frau Anna Gierst Pension Tiedeman Fr. 500.-
Frau Thide Louise Bräckenbühl Pension Tiedeman Fr. 500.-
Für den Fall des Nachlassverwalter als nicht vorhanden so falls die betreffenden Söhne nicht

III

Mein gesamter restlicher Nachlass fällt mit
 gleichem Anteil an folgende Personen:

1. Frau Sophie Brantenberg Paul	6 Teile
2. Herrin Dr. Alice Brantenberg	6 Teile
3. Herr Pierre Brantenberg	6 Teile
4. Herrn Robert Sefjanows Lohr Paul	4 Teile
5. Herr Walter Stahl	3 Teile
6. Frau Marie Merrill	4 Teile
7. Frau Nord Zorn	4 Teile
8. Frau Gerda Kreyen	3 Teile
9. Herr Prof. Wolfgang Brantenfels	2 Teile
10. Herr Michael Brantenfels	3 Teile
11. Frau Marienne Tischens	3 Teile
12. Fräulein Irene Brantenfels	3 Teile

Teile, oder mehrere der vorstehend genannten
 Personen vor mir verstanden werden so fällt die
 bestehende Begünstigung dahin, d. es befolgt
 die Anweisung bei den übrigen begünstigten
 Personen.

III

Ich beauftrage die Testamentvollstreckern, auch
 den Erbteil des mit der Stadt München einen Banklei-
 chensvertrag abzuschließen; (Ab 11. Juli
 Pflegschaft mit (Bürgermeister))

V

Als vollstreckte Testamentvollstreckern ernenne ich die
 Bankgesellschaft in München.

München den 14. November 1962

Alice Sefjanows

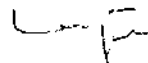
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Beglaubigung

Diese Photokopie gibt das hier eröffnete
Testament in allen Teilen richtig wieder.
Das Testament hat 4 Seiten

Zürich, den 11. JULI 1988


BEZIRKSGERICHT ZÜRICH
Der Präsident



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EXHIBIT “D”

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 New York State Surrogate's Court New York State Bar Association Official OCA Forms	New York County Surrogate's Court PROBATE DEPT. SEP 20 2018	Form AP-1 Petition for Ancillary Probate
	SURROGATE'S COURT OF THE STATE OF NEW YORK COUNTY OF <u>NEW YORK</u>	Filing Fee Paid \$ _____ Certificate Paid \$ _____ Trustee Costs Paid \$ _____ Prob. Costs Paid \$ _____ Bond Fee \$ _____ Received No. _____ No. _____
ANCILLARY PROBATE PROCEEDING, WILL OF ALICE LEFFMANN a/k/a ALICE BRANDENSTEIN-LEFFMANN a domiciliary of <u>Switzerland</u> Deceased		<input type="checkbox"/> Ancillary Letters Testamentary <input checked="" type="checkbox"/> Ancillary Letters of Administration c.t.a. <input type="checkbox"/> Without Ancillary Letters File No. <u>2010-2984</u>

TO THE SURROGATE'S COURT, COUNTY OF NEW YORK

It is respectfully alleged:

1. The name, citizenship, domicile (or, in the case of a bank or trust company, its principal office) and interest in this proceeding of the petitioner(s) are as follows:

Petitioner Information:

Name	<u>Nicholas John Day</u>			Citizenship	<u>United Kingdom</u>
Domicile Address: Street and Number	<u>13 Whlony Brse</u>				
City, Village, or Town	State	ZIP Code	Country		
<u>Droughly Ferry</u>	<u>Oundee</u>	<u>DD8 2HU</u>	<u>United Kingdom</u>		
Mailing Address: Street and Number					
City, Village, or Town	State	ZIP Code	Country		
Interest (Check One):	<input type="checkbox"/> Executor named in decedent's Will <input type="checkbox"/> Creditor <input checked="" type="checkbox"/> Other See Attachment 1				
Name				Citizenship	
Domicile Address: Street and Number					
City, Village, or Town	State	ZIP Code	Country		
Mailing Address: Street and Number					
City, Village, or Town	State	ZIP Code	Country		
Interest (Check One):	<input type="checkbox"/> Executor named in decedent's Will <input type="checkbox"/> Creditor <input type="checkbox"/> Other				

2. The name, domicile, date and place of death, and national citizenship of the above-named decedent are as follows:

Decedent Information:

Name	<u>Alice Leffmann</u>			Citizenship	<u>Germany</u>
Domicile Address: Street and Number	<u>Steinwiesstrasse 6</u>				
City, Village, or Town	State	ZIP Code	Country		
<u>Zurich</u>	<u>Switzerland</u>		<u>Switzerland</u>		
County	Date of Death	Place of Death			
<u>Switzerland</u>	<u>June 23, 1885</u>	<u>Switzerland</u>			

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3. Decedent left will in writing dated November 14, 1982 (and codicil(s) dated _____), which was duly admitted to probate on December 5, 1988 by the Regional Court of Zurich Court, County of _____ State of Switzerland, being a competent court of the state of the domicile of decedent having jurisdiction thereof, and the Will/Codicil is not subject to contest under the laws of the state.

On 07/12/1988, letters were issued by the court to Schweizerische Bankgesellschaft in Zurich, and the amount of the security given on the original appointment was \$ _____. Under the Will/Codicil a bond is is not dispensed with.

4. (a) The Will/Codicil upon ancillary probate may operate upon property in the State of New York consisting of real property and personal property described and valued as follows:

Personal Property: Description and Location	Value
Total Personal Property	\$ 0.00

Improved Real Property in New York State: Description and Location	Value
Total Improved Property	\$ 0.00

5. The names, addresses and interests of all persons entitled to process are as follows:
(Include all domiciliary creditors or domiciliaries claiming to be creditors and such persons entitled to letters pursuant to SCPA 1604)

Name New York State Department of Taxation and Finance			
Address: Street and Number Building 9, W.A. Hamman Campus			
City, Village, or Town Albany	State New York	ZIP Code 12227	Country U.S.A.
Nature of Interest or Amount of Claim Statutory Party			
Name Schweizerische Bankgesellschaft in Zurich			
Address: Street and Number P.O. Box CH 8098			
City, Village, or Town Zurich	State Zurich	ZIP Code	Country Switzerland
Nature of Interest or Amount of Claim Executor named in Decedant's Will			
Name See Attachment 2			
Address: Street and Number			
City, Village, or Town	State	ZIP Code	Country
Nature of Interest or Amount of Claim			
Name			
Address: Street and Number			
City, Village, or Town	State	ZIP Code	Country
Nature of Interest or Amount of Claim			
Name			
Address: Street and Number			
City, Village, or Town	State	ZIP Code	Country
Nature of Interest or Amount of Claim			
Name			
Address: Street and Number			
City, Village, or Town	State	ZIP Code	Country
Nature of Interest or Amount of Claim			
Name			
Address: Street and Number			
City, Village, or Town	State	ZIP Code	Country
Nature of Interest or Amount of Claim			

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8. The name and address of each domiciliary beneficiary under the Will/Codicil having an interest in this state is as follows:

(a) Each beneficiary who is of full age and sound mind or which is a corporation or association:

Name See Attachment 3			
Address: Street and Number			
City, Village, or Town	State	ZIP Code	Country
Interest			
Name			
Address: Street and Number			
City, Village, or Town	State	ZIP Code	Country
Interest			
Name			
Address: Street and Number			
City, Village, or Town	State	ZIP Code	Country
Interest			
Name			
Address: Street and Number			
City, Village, or Town	State	ZIP Code	Country
Interest			
Name			
Address: Street and Number			
City, Village, or Town	State	ZIP Code	Country
Interest			

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6. (b) Each beneficiary who is an infant or otherwise under a disability:

Name	
Address: Street and Number	
City, Village or Town	State ZIP Code Country
Interest	
Infant	Birthdate _____ Person with Whom Resides _____ Father Living? <input type="checkbox"/> Yes <input type="checkbox"/> No Mother Living? <input type="checkbox"/> Yes <input type="checkbox"/> No
	Court-Appointed Guardian? <input type="checkbox"/> Yes <input type="checkbox"/> No
	Describe Appointment Guardian Name _____
	If yes, Guardian of: <input type="checkbox"/> Person <input type="checkbox"/> Property Guardian Address _____
Facts Regarding Disability	
Incompetent/Incapacitated	<input type="checkbox"/> Committee Name _____ Address _____
	<input type="checkbox"/> Conservator Name _____ Address _____
	<input type="checkbox"/> Guardian Name _____ Address _____
	Committed to Institution? <input type="checkbox"/> Yes Institution Name _____ <input type="checkbox"/> No Institution Address _____
Name of Relative/Friend with Interest in Welfare	
Address	
Prisoner	Place of Incarceration _____ Person with Interest in Welfare _____
	Description (in same language as will be used in the process)
Unknown	

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7. There are no persons interested in this proceeding other than those hereinbefore mentioned. No previous application for ancillary probate with or without ancillary letters has been made, except: None

WHEREFORE, petitioner(s) pray(s):

- (a) That process issue to all necessary parties
- (b) That the Will/Codicil be admitted to ancillary probate and
- (c) That ancillary letters issue thereon as follows:

Ancillary Letters Testamentary to:

Ancillary Letters of Administration c.t.a. to:
Laurel Zuckerman

No Ancillary Letters to be issued.

(d) Further relief sought (if any):

Dated: 17th August 2010

N. J. Day

Signature of Petitioner
Nicholas John Day
Print Name

Signature of Petitioner
Print Name

Signature of Petitioner
Print Name

Signature of Petitioner
Print Name

By _____
Signature

Print Name

Title

Name of Corporate Petitioner

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VERIFICATION AND WAIVER
For use when petitioner to be appointed is an individual

STATE OF NEW YORK }
COUNTY OF WESTCHESTER } ss.:

The undersigned, the petitioner named in the foregoing petition, being duly sworn, says:

1. VERIFICATION: I have read the foregoing petition subscribed by me and know the contents thereof, and the same is true of my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true.
2. WAIVER OF PROCESS: I hereby waive the issuance and service of any process issuing from such Surrogate's Court.

My domicile is 13 Whinny Brae, Broughty Ferry, Dundee DD5 2HU, United Kingdom

N. J. Day
Signature of Petitioner
Nicholas John Day
Print Name

On 17 AUG 2010, before me personally came Nicholas John Day to me known to be the person described in and who executed the foregoing instrument. Such person duly swore to such instrument before me and duly acknowledged that he/she executed the same.

Sworn to before me this
17 day of AUGUST, 2010

Dana M. Lispet
Notary Public
Commission Expires
(Affix Notary Stamp or Seal)
Consul

Consulate General Edinburgh

Commission Expires

Alexander M. Popovich
Signature of Attorney

Alexander M. Popovich
Print Name of Attorney

Herrick, Feinstein LLP
Firm

(212) 592-1400
Telephone

2 Park Avenue, New York, New York 10016
Address

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COMBINED VERIFICATION, OATH AND DESIGNATION
 LIC OF FRANCE For use with a petitioner to be appointed as an individual
 EMBASSY OF THE UNITED STATES OF AMERICA

STATE OF _____ } ss.:
 COUNTY OF _____ }

The undersigned, the executor appointed in the foregoing petition, being duly sworn, says:

1. VERIFICATION: I have read the foregoing petition and know the contents thereof, and the same is true of my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true.

2. OATH OF ANCILLARY EXECUTOR ADMINISTRATOR c.t.a.: I am over eighteen (18) years of age and a citizen of the United States; I will well, faithfully and honestly discharge the duties of ancillary executor/administrator c.t.a. under the will. I am not ineligible to receive letters.

3. DESIGNATION OF CLERK FOR SERVICE OF PROCESS: I do hereby designate the Clerk of the Surrogate's Court of New York County, and his or her successor in office as a person on whom service of any process issuing from such Surrogate's Court may be made, in like manner and with like effect as if it were served personally upon me, whenever I cannot be found within the State of New York after due diligence used.

My domicile is 14 Rue de la Republique, Bry-Sur-Marne, France 94360

REPUBLIC OF FRANCE CITY OF PARIS
 EMBASSY OF THE UNITED STATES OF AMERICA

[Signature]
 Signature of Petitioner
Laurel Zuckerman
 Print Name

On 9th Sept 2010, before me personally came Laurel Zuckerman to me known to be the person described in and who executed the foregoing instrument. Such person duly swore to such instrument before me and duly acknowledged that he/she executed the same.

Sworn to before me this 9th day of September 2010

[Signature]
 Notary Public
 Commission Expires: _____
 (Affix Notary Stamp or Seal)

Elizabeth P. Gourlay
 Consul
 US Embassy, Paris

INDEFINITE

[Signature]
 Signature of Attorney

Alexander M. Popovich
 Print Name of Attorney

Herrick, Feinstein LLP
 Firm

(212) 592-1400
 Telephone

1 Park Avenue, New York, New York 10016
 Address

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Attachment 1

Petitioner Information

The Petitioner, Nicholas John Day, is the executor named in the Will of Alice Anna Berta Brandenstein ("Alice Brandenstein"). Alice Brandenstein is a named beneficiary under the Will of Alice Leffmann. As the executor of the Estate of Alice Brandenstein, Nicholas Day is an interested party. The co-executor named in the Will of Alice Brandenstein, Malcolm Nicholas Mitchell, is deceased. No successor has been named in his place.

Attached as Exhibit A are: (1) a certified copy of Appointment of Executors for the Will of Alice Brandenstein, (2) a certified copy of Alice Brandenstein's Will, and (3) a copy of Alice Brandenstein's death certificate. Attached as Exhibit B is a copy of Malcolm Nicholas Mitchell's death certificate.

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EXHIBIT A

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COPIES OF THIS GRANT ARE NOT VALID UNLESS
THEY BEAR THE IMPRESSED SEAL OF THE COURT

IN THE HIGH COURT OF JUSTICE
The District Probate Registry at Birmingham

BE IT KNOWN that **ALICE ANNA BERTA BRANDENSTEIN**
otherwise **ALICE ANNA BERTHA BRANDENSTEIN**

of **.8 Hexham Way Shrewsbury**

died on the **17th day of February 1994**
domiciled in **England and Wales**

AND BE IT FURTHER KNOWN that the last Will and Testament with a Codicil of the said deceased (a copy of which is annexed) was proved and registered in the High Court of Justice and Administration of all the estate which by law devolves to and vests in the personal representative of the said deceased was granted by the said Court on this date
to the Executors

NICHOLAS JOHN DAY of **13 Whitney Brae Broughty Ferry
Dundee**

AND **MALCOLM NICHOLAS MITCHELL** of **4 College Hill
Shrewsbury SY1 1LU**

It is hereby certified that it appears from information supplied on the application for this grant that the gross value of the said estate in the United Kingdom amounts to £ 387,166 and the net value of such estate amounts to £ 304,478

Dated the **28th day of April 1994**


DISTRICT REGISTRAR/~~PROBATE OFFICER~~

Extracted by **SPROTT STOKES & TURNBULL, 2-4 College Hill Shrewsbury SY1 1LU**

PROBATE

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W. J. Day *Executed* *Witness* *Signature*
Witness
I ALICE ANNA BERTA BRANDENSTEIN of 8 Hexham Way, Shrewsbury

Shropshire Retired Medical Practitioner DECLARE this to be my last Will which I make this *Friday* day of *December* One thousand nine hundred and ninety two HEREBY REVOKING all other Wills and testamentary dispositions by me heretofore made

1. I APPOINT Nicholas John Day of 13 Whinny Brae Broughty Ferry Dundee Planning Officer and Malcolm Nicholas Mitchell of 4 College Hill Shrewsbury Shropshire Solicitor (hereinafter called "my Trustees") to be the Executors and trustees of this my Will

2. I GIVE to Mrs. Yvonne Day of 13 Whinny Brae Broughty Ferry aforesaid all my written manuscripts excluding any royalties being paid in respect of any manuscript published in my lifetime

3. I GIVE AND BEQUEATH equally between Peter Lindsay of Rue Boney 12 B4920 Embough Leige Belgium and his wife and children and Nicholas John Day and his wife and children all my personal chattels as defined by Section 33 (1) (X) of the Administration of Estate Act 1923 but exclusive of any money and securities for money but together with any royalties payable from any manuscript that may be published in my lifetime

4. I GIVE the following pecuniary legacies free of tax-

(a) to Ms Doreen Dahl of 18A Buckland Crescent London NW3 JDX the sum of Two thousand pounds

(b) to Mrs Mary Jones of 6 The Woodlands Gains Park Blicton Heath Shrewsbury the sum of Five thousand pounds but if she shall predecease me leaving a husband or issue living at the date of my death then such husband and issue shall take the said legacy equally between them

(c) to Mrs LUIH Belle of Clonardway 21 Hatch End Middlesex the sum of Five thousand pounds

(d) to Squadron Leader J Evans of 3 Hexham Way Shrewsbury the sum of Five hundred pounds but if he shall predecease me leaving a wife or issue living at the date of my death then such wife and issue shall take the said legacy equally between them

(e) to the Bishop of the Roman Catholic Diocese of Shrewsbury for use in the Diocese the sum of Three thousand pounds

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(f) to the Religious Society of Friends Quaker Peace and Service Friends House Euston Road London NW1 the sum of Ten thousand pounds

(g) to Strewsbury and District Arts Association the sum of Three thousand pounds

I DECLARE that the receipt of the Secretary or Treasurer for the time being of the Organizations mentioned in this Clause shall be a good and sufficient discharge to my Trustees

5. SUBJECT to the payment of my funeral and testamentary expenses and debts and of any gift given by this my Will or any Codicil hereto I GIVE the residue of my property whatsoever and wheresoever unto my Trustees upon trust for sale with power to postpone such sale upon the following trusts that is to say

(a) AS TO fifteen percent thereof to Mrs Edith Lindsay of 102 Gray Street Broughby Ferry Liverpool

(b) AS TO fifty five percent thereof to the said Nicholas John Day

(c) AS TO thirty percent thereof to the said Peter Lindsay

PROVIDED THAT if any the said Edith Lindsay Nicholas John Day or Peter Lindsay shall have died in my lifetime my Trustees shall hold her or his share of the said residue of my estate upon trust for his or her spouse if he or she shall survive me and if not to such of his or her children as shall be living at my death and shall attain the age of Eighteen years and if more than one in equal shares absolutely

6. TRUST moneys may be invested in the purchase of or at interest upon the security of such stocks funds shares securities or other investments or property of whatsoever nature and wheresoever (including the purchase of land) and whether involving liability or not or upon such personal credit with or without security as my Trustees shall in their absolute discretion think fit

7. ANY Executor or Trustee for the time being of this my Will being a Solicitor or other person engaged in any profession or business shall be entitled to charge retain and be paid all usual professional or other charges for business done by him or his firm in relation to the administration of my estate or the execution of the trusts hereof

2

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IN WITNESS whereof I have hereunto set my hand the day and year before written

SIGNED by the above-named Testatrix in our presence and by us in her presences

signed of *Przemolenski*

*of H Ranch 6/2/18 with Special Master S. Turchetta
e-Proposed to George Hill
Shrewsbury*

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N. J. Amy Escobar
Christy H. Jones
S. L. ...
Alice Brandenberg
~~I ALICE ANNE BETA BRANDENBERG~~ of 8 Hexham Way Shrewsbury

Shropshire Retired Medical Practitioner DECLARE this to be a
Codicil which I make this 11th day of October One
thousand nine hundred and ninety-three to my Will which bears date
the Twenty-first day of December One thousand nine hundred and
ninety-two

1. I GIVE to Anne Loxton-Cox the sum of Two thousand pounds free
of tax
 2. IN all other respects I confirm my said Will
- IN WITNESS whereof I have hereunto set my hand the day and year
first before written

SIGNED by the above-named
Testatrix in our presence and
by us in her presence:-

Alice Brandenberg

A. H. ...
10, HEXHAM WAY,
SHREWSBURY, SY26EX

ROBERTO C. H. SERRA POLICE

H. P. ...
10 Hexham Way,
Shrewsbury, SY26EX.

Housewife

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Application Number 130910972

QBDY 120520

CERTIFIED COPY OF AN ENTRY

DEATH		Entry No.
Supervising Office: <i>San Francisco</i>		46
1. Date and place of death: <i>San Francisco, California 1914</i>		
2. Name and address of decedent: <i>John ...</i>		
3. Date and place of birth: <i>San Francisco, California</i>		
4. Description and title of occupation: <i>Medical Practitioner (retired)</i>		
5. Name and address of informant: <i>...</i>		
6. Name and address of informant: <i>...</i>		
7. Cause of death: <i>10. Lung Cancer</i>		
<div style="border: 1px solid black; padding: 5px; display: inline-block;"> Certified Copy P. Cross </div>		
8. Signature of informant: <i>...</i>		
9. Date of certification: <i>...</i>		

CERTIFIED to be a true copy of an entry in the certified copy of a register of Births, Still-births or Deaths in the District above mentioned. Given at the GENERAL REGISTER OFFICE under the Seal of the said Office on *4th* June, 2009



CAUTION: THERE ARE OFFENCES RELATING TO FALSIFYING OR ALTERING A CERTIFICATE AND USING OR POSSESSING A FALSE CERTIFICATE. A CRIMINAL CONVICTION WARNING: A CERTIFICATE IS NOT EVIDENCE OF IDENTITY.

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EXHIBIT B

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CERTIFIED COPY
Pursuant to the Births and



OF AN ENTRY
Deaths Registration Act 1953

BAL 413371

DEATH		Entry No. 51
Registration district: Shropshire		Administrative area
Sub-district: Shropshire		County of Shropshire
1. Date and place of death Seventh February 2010 Royal Shrewsbury Hospital, Myton Oak Road, Shrewsbury		
2. Name and surname Malcolm Nicholas MITCHELL		3. Sex Male 4. Major surname of woman who has married
3. Date and place of birth Eighteenth January 1939 Poole, Dorset		
4. Occupations and usual address Solicitor (retired) Husband of Judith Mary MITCHELL, Medical Practice Manager (retired) 6 Hazlham Way, Sutton Farm, Shrewsbury, Shropshire		
7.(a) Name and surname of informant Judith Mary MITCHELL		(b) Qualification Widow of deceased Present at the death
(c) Usual address 6 Hazlham Way, Sutton Farm, Shrewsbury, Shropshire		
8. I certify that the particulars given by me above are true to the best of my knowledge and belief Judith Mitchell		Signature of informant
9. Cause of death (a) Ischaemic Heart Disease (b) Coronary Atherosclerosis Certified by John Furbals Eley H.M. Coroner for Mid and North-West Shropshire a for post-mortem without inquest		
10. Date of registration Eleventh February 2010		11. Signature of registrar L. Moxon Deputy Registrar

Certified to be a true copy of an entry in a register in my custody.

John R. Roberts Deputy

Superintendent Registrar

Date - 3 AUG 2010

* Debit and withdrawal does not apply

CAUTION: THERE ARE OFFENCES RELATING TO FALSIFYING OR ALTERING A CERTIFICATE AND USING

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Attachment 2

Section 5

The names, address and interests of all persons entitled to process are as follows:

1. **Name:** PAUL HARRY LEFFMANN
Address: 407 Murdock Road, Baltimore, MD 21212
Nature of Interest: Beneficiary
2. **Name:** SIGRID BRAUNFELS
Address: Heßstr. 22, D 80779 München, Germany
Nature of Interest: Beneficiary
3. **Name:** VERONIKA BRAUNFELS
Address: Prinzregentenstr. 9, 10717 Berlin, Germany
Nature of Interest: Beneficiary
4. **Name:** GEORG BRAUNFELS
Address: Heinrich-Könn-Straße 183, 40825 Düsseldorf, Germany
Nature of Interest: Beneficiary
5. **Name:** STEPHAN BRAUNFELS
Address: Architekten BDA, Veteranärstrasse 9, D - 80539, München, Germany
Nature of Interest: Beneficiary
6. **Name:** MICHAEL BRAUNFELS
Address: Dransdorferstr. 40, 50988 Köln, Germany
Nature of Interest: Beneficiary
7. **Name:** DOREEN DAHL
Address: 14-87A Kannapan Thoppu, Vatta Kottai, Varyoor 629 401, India
Nature of Interest: Beneficiary
8. **Name:** FRANÇOISE BRANDIN
Address: 16 Rue Paul Bert, 75011 Paris, France
Nature of Interest: Beneficiary
9. **Name:** CATHERINE BRANDIN
Address: 8 Avenue du Château de Soullns, 91800 Brunoy, France
Nature of Interest: Beneficiary
10. **Name:** DENISE BRANDIN
Address: 228 Avenue de la Division Leclerc, 95160 Montmorency, France
Nature of Interest: Beneficiary

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11. **Name:** PETER LINDSAY
Address: 2 Hope Cottage, Chapel Lane, Bucklow Hill, Knutsford, Cheshire
WA18, 8RF, UK (England)
Nature of Interest: Beneficiary
12. **Name:** YVONNE DAY
Address: 13 Whinny Brae, Broughty Ferry, Dundee DD5, 2HU, UK (Scotland)
Nature of Interest: Beneficiary
13. **Name:** NICHOLAS DAY
Address: 13 Whinny Brae, Broughty Ferry, Dundee DD5, 2HU, UK (Scotland)
Nature of Interest: Beneficiary.

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Attachment 3

Section 6

The name and address of each domiciliary beneficiary under the Will/Codicil having an interest in this estate is as follows:

1. Name: PAUL HARRY LEFFMANN
Address: 407 Murdock Road, Baltimore, MD 21212
Nature of Interest: Beneficiary
2. Name: SIGRID BRAUNFELS
Address: Heßstr. 22, D 80779 München, Germany
Nature of Interest: Beneficiary
3. Name: VERONIKA BRAUNFELS
Address: Prinzregentenstr. 9, 10717 Berlin, Germany
Nature of Interest: Beneficiary
4. Name: GEORG BRAUNFELS
Address: Heinrich-Könn-Straße 183, 40625 Düsseldorf, Germany
Nature of Interest: Beneficiary
5. Name: STEPHAN BRAUNFELS
Address: Architekten BDA, Veterenärstrasse 9, D - 80639, München, Germany
Nature of Interest: Beneficiary
6. Name: MICHAEL BRAUNFELS
Address: Dransdorferstr. 40, 50988 Köln, Germany
Nature of Interest: Beneficiary
7. Name: IRENE BRAUNFELS (believed to be deceased)
Address: N/A
Nature of Interest: Beneficiary
8. Name: MARIANNE DISCHGANS (believed to be deceased)
Address: N/A
Nature of Interest: Beneficiary
9. Name: DOREEN DAHL
Address: 14-87A Kannapan Thoppu, Vatta Kottal, Varyipoor 629 401, India
Nature of Interest: Beneficiary
10. Name: FRANCOISE BRANDIN
Address: 15 Rue Paul Bert, 75011 Paris, France
Nature of Interest: Beneficiary

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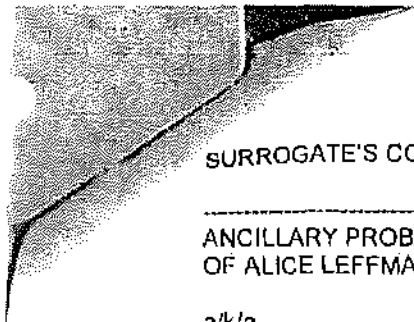
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11. **Name:** CATHERINE BRANDIN
Address: 8 Avenue du Château de Soullins, 91800 Brunoy, France
Nature of Interest: Beneficiary
12. **Name:** DENISE BRANDIN
Address: 228 Avenue de la Division Leclerc, 95160 Montmorency, France
Nature of Interest: Beneficiary
13. **Name:** PETER LINDSAY
Address: 2 Hope Cottage, Chapel Lane, Bucklow Hill, Knutsford, Cheshire
WA16, 8RF, UK (England)
Nature of Interest: Beneficiary
14. **Name:** YVONNE DAY
Address: 13 Whinny Brae, Broughty Ferry, Dundee DD5, 2HU, UK (Scotland)
Nature of Interest: Beneficiary
15. **Name:** NICHOLAS DAY
Address: 13 Whinny Brae, Broughty Ferry, Dundee DD5, 2HU, UK (Scotland)
Nature of Interest: Beneficiary.
16. **Name:** MARGA MERRILL (believed to be deceased)
Address: N/A
Nature of Interest: Beneficiary
17. **Name:** NORA GORNER (believed to be deceased)
Address: N/A
Nature of Interest: Beneficiary
18. **Name:** MARIANNE HUDDLE (believed to be deceased)
Address: N/A
Nature of Interest: Beneficiary
19. **Name:** GEORGE SIMON (believed to be deceased)
Address: N/A
Nature of Interest: Beneficiary

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EXHIBIT "E"

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SURROGATE'S COURT: COUNTY OF NEW YORK

-----X
ANCILLARY PROBATE PROCEEDING, WILL :
OF ALICE LEFFMANN :

a/k/a :

ALICE BRANDENSTIEN-LEFFMANN :

a domiciliary of Switzerland :

Deceased :

-----X

ATTORNEY
AFFIRMATION

ALEXANDER M. POPOVICH, an attorney duly admitted to practice in the Courts of this State affirms under penalty of perjury as follows:

1. I am an attorney at the law firm of Herrick, Feinstein LLP, attorneys for the petitioner, Nicholas John Day ("Petitioner"), and his appointee for ancillary executrix of the Estate of Alice Leffmann ("Estate"), Laurel Zuckerman ("Laurel").

2. The sole asset of the Estate is a painting located in New York ("Painting"). Title to this painting is the subject of a proposed legal action ("Claim").

3. Petitioner seeks to open an ancillary probate proceeding and to appoint an ancillary executor to pursue the Claim and distribute any funds that may be received as a result of the Claim. Because of the facts surrounding the acquisition of the Painting and questions regarding the legal title to the Painting, there is a significant need to have this Petition heard on an emergency basis. The property being sought is the basis of the Claim that will be lodged as soon as an ancillary executor is appointed. The Claim involves the recovery of a painting believed to have been illegally acquired from the decedent during the Nazi occupation. The Painting is on exhibition in a museum located in New York City. I

respectfully contend that any delay in hearing the Petition or appointing an ancillary executor may be injurious to the ability to pursue the claim.

4. Alice Leffmann died on June 25, 1966. Schweizerische Bankgesellschaft of Zurich (now UBS, Zurich, Switzerland, hereinafter "UBS") was named as the executor in Alice Leffmann's Will. The estate proceeding in Switzerland has concluded and is no longer open. No ancillary probate in New York, or any other jurisdiction outside of Switzerland, was ever opened.

5. UBS is not qualified to act as ancillary executor in the State of New York, however, pursuant to SCPA §707 and §1608, UBS is qualified to appoint the ancillary executor. I have contacted UBS regarding it bringing the Petition to appoint an ancillary executor I have spoken with and have had written correspondence with Olivia Van Caillie, Legal Wealth Planning, UBS AG in Zurich Switzerland. Per Mrs. Caillie, UBS is declining to take any action with regard to the Estate including refusing to act as ancillary executor (for which they are not qualified) or to bring the Petition to appoint an ancillary executor.

6. In his Petition, Petitioner nominates Laurel as ancillary executor, and I respectfully contend she is the most qualified to act. Laurel has spent the past six plus years researching matters, including attempting to locate and communicate with all potential beneficiaries, and otherwise bringing this to a point where a claim for the Painting can be pursued. She has developed a relationship with the beneficiaries, who are domiciled in a number of countries throughout the world, has the most intimate knowledge of the facts surrounding the Claim, and the best ability to pursue the Claim in the most cost and time efficient manner. Laurel is a citizen of the United States and is a relative of the decedent and a blood relative of a beneficiary named under the decedent's Will (daughter of Paul Harry Leffmann, who is the beneficiary under the Will and Revocable Trust of Paul Henry Leffmann, a named beneficiary under the Will of Alice Leffmann). Lastly, because of the sensitive nature of the claim and privacy concerns of the beneficiaries, appointment of a non-family member to act as ancillary executor could be injurious to the claim and/or beneficiaries.

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7 Exhibit A and B attached to this Affirmation, layout in detail those persons believed to be the beneficiaries of the Estate, and includes their projected beneficial interest and manner in which they became beneficiaries.

8. In determining whether a bond is required or dispensed with, I believe it is important to bring to the Court's attention that the sole asset of the Estate is a claim for the return of personal property. This claim is highly contingent in nature and currently has no or little monetary value.

9. Because of the sensitive nature of the Claim and the privacy concerns of some of the beneficiaries, I respectfully submit that the facts surrounding and the documents related to this appointment be afforded the highest level of confidentiality and, to the extent possible, kept under seal.

WHEREFORE, I respectfully request the following: (a) the Petition for Ancillary Probate be heard on an emergency basis; (b) Laurel Zuckerman be appointed ancillary executrix and be granted Ancillary Letters Testamentary, (c) the bond requirement be waived; and (d) The facts surrounding and the documents related to this appointment be kept under seal.



ALEXANDER M. POPOVICH

Sworn to before me this
18th day of August 2010

Larisa Poretskaya
Notary Public

LARISSA PORETSKAYA
Notary Public, State of New York
No. 01PC8188619
Qualified in Westchester County
Commission Expires June 8, 2012

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EXHIBIT A

The names, address and interests of all persons entitled to process are as follows:

1. **Name:** PAUL HARRY LEFFMANN
Address: 407 Murdock Road
Baltimore, MD 21212

Nature of Interest: Beneficiary; 8.5106% beneficial interest in the residue of the estate.

Paul Harry Leffmann is the son of Paul Henry Leffmann (deceased). Paul Henry Leffmann was a nephew of Paul Friedrich Leffmann who was the husband of Alice Leffmann. Paul Henry Leffmann survived Alice Leffmann and was bequeathed a 8.5106% interest (4/47 shares) in the residue of the estate of Alice Leffmann. Paul Henry Leffmann died in the United States on October 8, 2002 leaving a Will and Revocable Trust that were duly administered. Pursuant to Paul Henry Leffmann's Revocable Trust, Paul Harry Leffmann was bequeathed all tangible personal property of Paul Henry Leffmann, such personal property including a fractional interest in the artwork that is the subject of the proposed claim. Therefore, Paul Harry Leffmann is entitled to a 8.5106% interest (4/47 shares) in the residue of the estate of Alice Leffmann.

2. **Name:** SIGRID BRAUNFELS
Address: Heßstr. 22,
D 80779 München
Germany

Nature of Interest: Beneficiary; 2.1277% beneficial interest in the residue of the estate.

Sigrd Braunfels was married to Wolfgang Braunfels (deceased). Wolfgang Braunfels was a friend of Alice Leffmann who survived her and was bequeathed a 4.2553% interest (2/47 shares) in the residue of the estate of Alice Leffmann. Wolfgang Braunfels died in Germany on March 5, 1987 without a Will. Wolfgang Braunfels was survived by his wife, Sigrd Braunfels, and his three children, Veronika, Georg and Stephan. Pursuant to the laws of intestacy of Germany, Sigrd Braunfels was bequeathed a 50% interest in the entire estate of Wolfgang Braunfels, and therefore is entitled to a 2.1277% interest (1/47 shares) in the residue of the estate of Alice Leffmann.

3. **Name:** VERONIKA BRAUNFELS
Address: Prinzregentenstr. 9
10717 Berlin,
Germany

Nature of Interest: Beneficiary; 0.7092% beneficial interest in the residue of the estate.

Veronika Braunfels is the daughter of Wolfgang Braunfels (deceased). Wolfgang Braunfels was a friend of Alice Leffmann who survived her and was bequeathed a 4.2553% interest (2/47 shares) in the residue of the estate of Alice Leffmann. Wolfgang Braunfels died in Germany on March 5, 1987 without a Will. Pursuant to the laws of intestacy of Germany, Veronika Braunfels was bequeathed a 16.667% interest in the entire estate of Wolfgang Braunfels, and therefore is entitled to a 0.7092% interest (0.333/47 shares) in the residue of the estate of Alice Leffmann.

4. **Names:** GEORG BRAUNFELS
Address: Heinrich-Könn-Straße 183
40625 Düsseldorf
Germany

Nature of Interest: Beneficiary; 0.7092% beneficial interest in the residue of the estate.

Georg Braunfels is the son of Wolfgang Braunfels (deceased). Wolfgang Braunfels was a friend of Alice Leffmann who survived her and was bequeathed a 4.2553% interest (2/47 shares) in the residue of the estate of Alice Leffmann. Wolfgang Braunfels died in Germany on March 5, 1987 without a Will. Pursuant to the laws of intestacy of Germany, Georg Braunfels was bequeathed a 16.667% interest in the entire estate of Wolfgang Braunfels, and therefore is entitled to a 0.7092% interest (0.333/47 shares) in the residue of the estate of Alice Leffmann.

5. **Name:** STEPHAN BRAUNFELS
Address: Architekten BDA
Veterenärstrasse 9
D - 80539 München
Germany

Nature of Interest: Beneficiary; 0.7092% beneficial interest in the residue of the estate.

Stephan Braunfels is the son of Wolfgang Braunfels (deceased). Wolfgang Braunfels was a friend of Alice Leffmann who survived her and was bequeathed a 4.2553% (2/47 shares) interest in the residue of the estate of Alice Leffmann. Wolfgang Braunfels died in Germany on March

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5, 1987 without a Will. Pursuant to the laws of intestacy of Germany, Stephan Braunfels was bequeathed a 16.667% interest in the entire estate of Wolfgang Braunfels, and therefore is entitled to a 0.7092% interest (0.333/47 shares) in the residue of the estate of Alice Leffmann.

6. Name: MICHAEL BRAUNFELS
Address: Dransdorferstr. 40
50968 Köln
Germany

Nature of Interest: Beneficiary; 6.3830% beneficial interest in the residue of the estate.

Michael Braunfels was a friend of Alice Leffmann who survived her and was bequeathed a 6.3830% interest (3/47 shares) in the residue of the estate of Alice Leffmann.

7. Name: IRENE BRAUNFELS (believed to be deceased)
Address: N/A

Nature of Interest: Beneficiary; 6.3830% beneficial interest in the residue of the estate.

Irene Braunfels was a friend of Alice Leffmann who survived her and was bequeathed a 6.3830% interest (3/47 shares) in the residue of the estate of Alice Leffmann. At this time, no further information with respect to Irene Braunfels' death or heirs can be located.

8. Name: MARIANNE DISCHGANS (believed to be deceased)
Address: N/A

Nature of Interest: Beneficiary; 6.3830% beneficial interest in the residue of the estate.

Marianne Dischgans was a friend of Alice Leffmann who survived her and was bequeathed a 6.3830% interest (3/47 shares) in the residue of the estate of Alice Leffmann. Marianne Dischgans may have been survived by her husband, Gunther Dischgans, and/or any one of her children, Johannes Dischgans, Josef Dischgans, Elisabeth Zander, Maria Jaschke, Katharina Roper, and Christine Traubel. At this time, no further information with respect to Marianne Dischgans' death or heirs can be located.

9. **Name:** DOREEN DAHL
Address: 14-87A Kannapan Thoppu
Vatta Kottai
Variyoor 629 401
India

Nature of Interest: Beneficiary; 6.3830% beneficial interest in the residue of the estate.

Doreen Dahl is the daughter of Walter Dahl (deceased). Walter Dahl was a nephew of Alice Leffmann who survived her and was bequeathed a 6.3830% interest (3/47 shares) in the residue of the estate of Alice Leffmann. Walter Dahl died in England on September 1, 1999 leaving a will that was duly administered. Pursuant to Walter Dahl's Will, Doreen Dahl was the sole legatee of the entire estate of Walter Dahl and therefore is entitled to a 6.3830% interest (3/47 shares) in the residue of the estate of Alice Leffmann.

10. **Name:** FRANCOISE BRANDIN
Address: 15 Rue Paul Bert
75011 Paris, France

Nature of Interest: Beneficiary; 4.7872% beneficial interest in the residue of the estate.

Francoise Brandin is entitled to an interest through the estate of her father, Werner Pierre Brandin.

Werner Pierre Brandin was a nephew of Alice Leffmann who survived her and was bequeathed a 12.7660% interest (6/47 shares) in the residue of the estate of Alice Leffmann.

In addition, Werner Pierre Brandin received an additional 6.3830% interest (3/47 shares), in the residue of the estate of Alice Leffmann from his mother, Sophie Brandenstein. Sophie Brandenstein (deceased) was married to Alice Leffmann's brother, Friedrich Brandenstein, who predeceased Alice Leffmann. Sophie Brandenstein survived Alice Leffmann and was bequeathed a 12.7660% interest (6/47 shares) in the residue of the estate of Alice Leffmann. Sophie Brandenstein died in Switzerland on August 16, 1970 leaving a Will that was duly administered. Sophie Brandenstein was survived by her two children, Werner Pierre Brandin and Alice Brandenstein. Pursuant to Sophie Brandenstein's Will, Werner Pierre Brandin was bequeathed a 50% interest in Sophie Brandenstein's entire estate, which included a 6.3830% interest (3/47 shares) in the residue of Alice Leffmann's estate.

Werner Pierre Brandin died in France on May 7, 2004 without a Will. Werner Pierre Brandin was survived by his wife, Denise Brandin, and his two children, Francoise Brandin and Catherine Brandin. Pursuant to the laws of intestacy of France, Francoise Brandin is entitled to a 25% interest in the entire estate of Werner Pierre Brandin, and therefore a 4.7827% interest (2.25/47 shares) in the residue of the estate of Alice Leffmann.

11. Name: CATHERINE BRANDIN
Address: 8 Avenue du Chateau de Soullins
91800 Brunoy, France

Nature of Interest: Beneficiary; 4.7872% beneficial interest in the residue of the estate.

Catherine Brandin is entitled to an interest through the estate of her father, Werner Pierre Brandin.

Werner Pierre Brandin was a nephew of Alice Leffmann who survived her and was bequeathed a 12.7660% interest (6/47 shares) in the residue of the estate of Alice Leffmann.

In addition, Werner Pierre Brandin received an additional 6.3830% interest (3/47 shares), in the residue of the estate of Alice Leffmann from his mother, Sophie Brandenstein. Sophie Brandenstein (deceased) was married to Alice Leffmann's brother, Friedrich Brandenstein, who predeceased Alice Leffmann. Sophie Brandenstein survived Alice Leffmann and was bequeathed a 12.7660% interest (6/47 shares) in the residue of the estate of Alice Leffmann. Sophie Brandenstein died in Switzerland on August 16, 1970 leaving a Will that was duly administered. Sophie Brandenstein was survived by her two children, Werner Pierre Brandin and Alice Brandenstein. Pursuant to Sophie Brandenstein's Will, Werner Pierre Brandin was bequeathed a 50% interest in Sophie Brandenstein's entire estate, which included a 6.3830% interest (3/47 shares) in the residue of Alice Leffmann's estate.

Werner Pierre Brandin died in France on May 7, 2004 without a Will. Werner Pierre Brandin was survived by his wife, Denise Brandin, and his two children, Francoise Brandin and Catherine Brandin. Pursuant to the laws of intestacy of France, Catherine Brandin is entitled to a 25% interest in the entire estate of Werner Pierre Brandin, and therefore a 4.7827% interest (2.25/47 shares) in the residue of the estate of Alice Leffmann.

12. Name: DENISE BRANDIN
Address: 22B Avenue de la Division Leclerc
95160 Montmrency, France

Nature of Interest: Beneficiary; 9.5745% beneficial interest in the residue of the estate.

Denise Brandin is entitled to an interest through the estate of her late husband, Werner Pierre Brandin.

Werner Pierre Brandin was a nephew of Alice Leffmann who survived her and was bequeathed a 12.7660% interest (6/47 shares) in the residue of the estate of Alice Leffmann.

In addition, Werner Pierre Brandin received an additional 6.3830% interest (3/47 shares), in the residue of the estate of Alice Leffmann from his mother, Sophie Brandenstein. Sophie Brandenstein (deceased) was married to Alice Leffmann's brother, Friedrich Brandenstein, who predeceased Alice Leffmann. Sophie Brandenstein survived Alice Leffmann and was bequeathed a 12.7660% interest (6/47 shares) in the residue of the estate of Alice Leffmann. Sophie Brandenstein died in Switzerland on August 16, 1970 leaving a Will that was duly administered. Sophie Brandenstein was survived by her two children, Werner Pierre Brandin and Alice Brandenstein. Pursuant to Sophie Brandenstein's Will, Werner Pierre Brandin was bequeathed a 50% interest in Sophie Brandenstein's entire estate, which included a 6.3830% interest (3/47 shares) in the residue of Alice Leffmann's estate.

Werner Pierre Brandin died in France on May 7, 2004 without a Will. Werner Pierre Brandin was survived by his wife, Denise Brandin, and his two children, Françoise Brandin and Catherine Brandin. Pursuant to the laws of intestacy of France, Denise Brandin is entitled to a 50% interest in the entire estate of Werner Pierre Brandin, and therefore a 9.5745% interest (4.5/47 shares) in the residue of the estate of Alice Leffmann.

13. **Name:** PETER LINDSAY
Address: 2 Hope Coltage
Chapel Lane, Bucklow Hill, Knutsford, Cheshire WA16
8RF, UK (England)

Nature of Interest: Beneficiary; 7.1809% beneficial interest in the residue of the estate.

Peter Lindsay is entitled to an interest in the estate of Alice Leffmann through the estate of his mother, Edith Lindsay, and the estate of Alice Brandenstein.

Alice Brandenstein acquired interests in the estate of Alice Leffmann through two bequests. First, as a niece of Alice Leffmann she was bequeathed a 12.7660% interest (6/47 shares) in the residue of the estate

of Alice Leffmann. Second, through her mother, Sophie Brandenstein's estate, she was entitled to an additional 6.3830% interest (3/47 shares). Sophie Brandenstein (deceased) was married to Alice Leffmann's brother, Friedrich Brandenstein, who predeceased Alice Leffmann. Sophie Brandenstein survived Alice Leffmann and was bequeathed a 12.7660% interest (6/47 shares) in the residue of the estate of Alice Leffmann. Sophie Brandenstein died in Switzerland on August 16, 1970 leaving a Will that was duly administered. Sophie Brandenstein was survived by her two children, Werner Pierre Brandin and Alice Brandenstein. Pursuant to Sophie Brandenstein's Will, Alice Brandenstein was bequeathed a 50% interest in Sophie Brandenstein's entire estate, and therefore was entitled to a 6.3830% interest (3/47 shares) in the residue of Alice Leffmann's estate.

Alice Brandenstein died in England on February 17, 1984 leaving a Will that was duly administered. Pursuant to Alice Brandenstein's Will, Peter Lindsay was bequeathed a 30% interest in the residue of Alice Brandenstein's estate, and therefore is entitled to a 5.7447% interest (2.7/47 shares) in the residue of the estate of Alice Leffmann.

Edith Lindsay (deceased) was a cousin to Alice Brandenstein (deceased) and acquired an interest through her estate. Pursuant to Alice Brandenstein's Will, Edith Lindsay was bequeathed a 15% interest in the residue of Alice Brandenstein's estate, and therefore was entitled to a 2.8723% interest (1.35/47 shares) in the residue of the estate of Alice Leffmann. Edith Lindsay died in England on June 14, 1998 leaving a Will that was duly administered. Edith Lindsay was survived by her two children, Peter Lindsay and Yvonne Lindsay. Pursuant to Edith Lindsay's Will, Peter Lindsay was bequeathed a 50% interest in Edith Lindsay's entire estate, and therefore has a 1.4362% interest (0.675/47 shares) in the residue of the estate of Alice Leffmann.

In sum, Peter Lindsay is entitled to a 5.7447% interest through the estate of Alice Brandenstein, and a 1.4362% interest through the estate of Edith Lindsay for a total of a 7.1809% interest (3.375/47 shares) in the residue of the estate of Alice Leffmann.

14. Name: YVONNE LINDSAY DAY
Address: 13 Whinny Brae
Broughtly Ferry, Dundee DD5
2HU, UK (Scotland)

Nature of Interest: Beneficiary; 1.4362% beneficial interest in the residue of the estate.

Yvonne Lindsay Day is entitled to an interest in the estate of Alice Leffmann through the estate of her mother, Edith Lindsay.

Alice Brandenstein acquired interests in the estate of Alice Leffmann through two bequests. First, as a niece of Alice Leffmann she was bequeathed a 12.7660% interest (6/47 shares) in the residue of the estate of Alice Leffmann. Second, through her mother, Sophie Brandenstein's estate, she was entitled to an additional 6.3830% interest (3/47 shares). Sophie Brandenstein (deceased) was married to Alice Leffmann's brother, Friedrich Brandenstein, who predeceased Alice Leffmann. Sophie Brandenstein survived Alice Leffmann and was bequeathed a 12.7660% interest (6/47 shares) in the residue of the estate of Alice Leffmann. Sophie Brandenstein died in Switzerland on August 16, 1970 leaving a Will that was duly administered. Sophie Brandenstein was survived by her two children, Werner Pierre Brandin and Alice Brandenstein. Pursuant to Sophie Brandenstein's Will, Alice Brandenstein was bequeathed a 50% interest in Sophie Brandenstein's entire estate, and therefore was entitled to a 6.3830% interest (3/47 shares) in the residue of Alice Leffmann's estate.

Alice Brandenstein died in England on February 17, 1994 leaving a Will that was duly administered.

Edith Lindsay (deceased) was a cousin to Alice Brandenstein (deceased) and acquired an interest through her estate. Pursuant to Alice Brandenstein's Will, Edith Lindsay was bequeathed a 15% interest in the residue of Alice Brandenstein's estate, and therefore was entitled to a 2.8723% interest (1.35/47 shares) in the residue of the estate of Alice Leffmann. Edith Lindsay died in England on June 14, 1998 leaving a Will that was duly administered. Edith Lindsay was survived by her two children, Peter Lindsay and Yvonne Lindsay. Pursuant to Edith Lindsay's Will, Yvonne Lindsay was bequeathed a 50% interest in Edith Lindsay's entire estate, and therefore has a 1.4362% interest (0.675/47 shares) in the residue of the estate of Alice Leffmann.

15. Name: NICHOLAS DAY
Address: 13 Whinny Brae
Broughty Ferry, Dundee DD5
2HU, UK (Scotland)

Nature of Interest: Beneficiary; 10.5319% beneficial interest in the residue of the estate.

Nicholas Jon Day is entitled to an interest in the estate of Alice Leffmann through the estate of Alice Brandenstein.

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Alice Brandenstein acquired interests in the estate of Alice Leffmann through two bequests. First, as a niece of Alice Leffmann she was bequeathed a 12.7660% interest (6/47 shares) in the residue of the estate of Alice Leffmann. Second, through her mother, Sophie Brandenstein's estate, she was entitled to an additional 6.3830% interest (3/47 shares). Sophie Brandenstein (deceased) was married to Alice Leffmann's brother, Friedrich Brandenstein, who predeceased Alice Leffmann. Sophie Brandenstein survived Alice Leffmann and was bequeathed a 12.7660% interest (6/47 shares) in the residue of the estate of Alice Leffmann. Sophie Brandenstein died in Switzerland on August 16, 1970 leaving a Will that was duly administered. Sophie Brandenstein was survived by her two children, Werner Pierre Brandin and Alice Brandenstein. Pursuant to Sophie Brandenstein's Will, Alice Brandenstein was bequeathed a 50% interest in Sophie Brandenstein's entire estate, and therefore was entitled to a 6.3830% interest (3/47 shares) in the residue of Alice Leffmann's estate.

Alice Brandenstein died in England on February 17, 1994 leaving a Will that was duly administered.

Pursuant to Alice Brandenstein's Will, Nicholas Day was bequeathed a 55% interest in the residue of Alice Brandenstein's estate, and therefore is entitled to a 10.5319% interest (4.95/47 shares) in the residue of the estate of Alice Leffmann.

16. Name: MARGA MERRILL (believed to be deceased)
Address: N/A

Nature of Interest: Beneficiary; 8.5106% beneficial interest in the residue of the estate.

Marga Merrill was a friend of Alice Leffmann who survived her and was bequeathed a 8.5106% interest (4/47 shares) in the residue of the estate of Alice Leffmann. It is believed that Marge Merrill died in New Haven County, Connecticut, United States, on June 13, 1999. At this time, no further information with respect to Marga Merrill's death or heirs can be located.

17. Name: NORA GORNER (believed to be deceased)
Address: N/A

Nature of Interest: Beneficiary; 8.5106% beneficial interest in the residue of the estate.

Handwritten note: Marga Merrill was a friend of Alice Leffmann who survived her and was bequeathed a 8.5106% interest (4/47 shares) in the residue of the estate of Alice Leffmann. It is believed that Marge Merrill died in New Haven County, Connecticut, United States, on June 13, 1999. At this time, no further information with respect to Marga Merrill's death or heirs can be located.

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Nora Gorner was a friend of Alice Leffmann who survived her and was bequeathed a 8.5106% interest (4/47 shares) in the residue of the estate of Alice Leffmann. It is believed that Nora Gorner died in New Haven County, Connecticut, United States, in July of 1994. At this time, no further information with respect to Nora Gorner's death or heirs can be located.

18. **Name:** MARIANNE HUDDLE (believed to be deceased)
Address: N/A

Nature of Interest: Beneficiary; 5.1064% beneficial interest in the residue of the estate.

Marianne Huddle is entitled to an interest in the estate of Alice Leffmann through the estate of her father, Martin Krayn.

Marianne Huddle is the daughter of Gerda (deceased) and Martin Krayn (deceased). Gerda Krayn was a niece of Alice Leffmann who survived her and was bequeathed a 6.3830% interest (3/47 shares) in the residue of the estate of Alice Leffmann. Gerda Krayn died in Johannesburg, South Africa on July 1, 1970 leaving a Will that was duly administered. Pursuant to Gerda Krayn's Will, Martin Krayn was the sole legatee of the residue of the estate of Gerda Krayn, and therefore entitled to a 6.3830% interest (3/47 shares) in the estate of Alice Leffmann. Martin Krayn died in Johannesburg, South Africa on December 8, 1975 leaving a Will that was duly administered. Pursuant to Martin Krayn's Will, Marianne Huddle was bequeathed a 4/5 interest in the residue of the estate of Martin Krayn, and therefore a 5.1064% interest (2.4/47 shares) in the residue of the estate of Alice Leffmann. At this time, no further information with respect to Marianne Huddle's death or heirs can be located.

19. **Name:** GEORGE SIMON (believed to be deceased)
Address: N/A
Nature of Interest: Beneficiary; 1.2766% beneficial interest in the residue of the estate.

George Simon is entitled to an interest in the estate of Alice Leffmann through the estate of his father, Martin Krayn.

George Simon is the son of Gerda (deceased) and Martin Krayn (deceased). Gerda Krayn was a niece of Alice Leffmann who survived her and was bequeathed a 6.3830% interest (3/47 shares) in the residue of the estate of Alice Leffmann. Gerda Krayn died in Johannesburg, South Africa on July 1, 1970 leaving a Will that was duly administered. Pursuant to Gerda Krayn's Will, Martin Krayn was the sole legatee of the residue of the estate of Gerda Krayn, and therefore received a 6.3830% interest

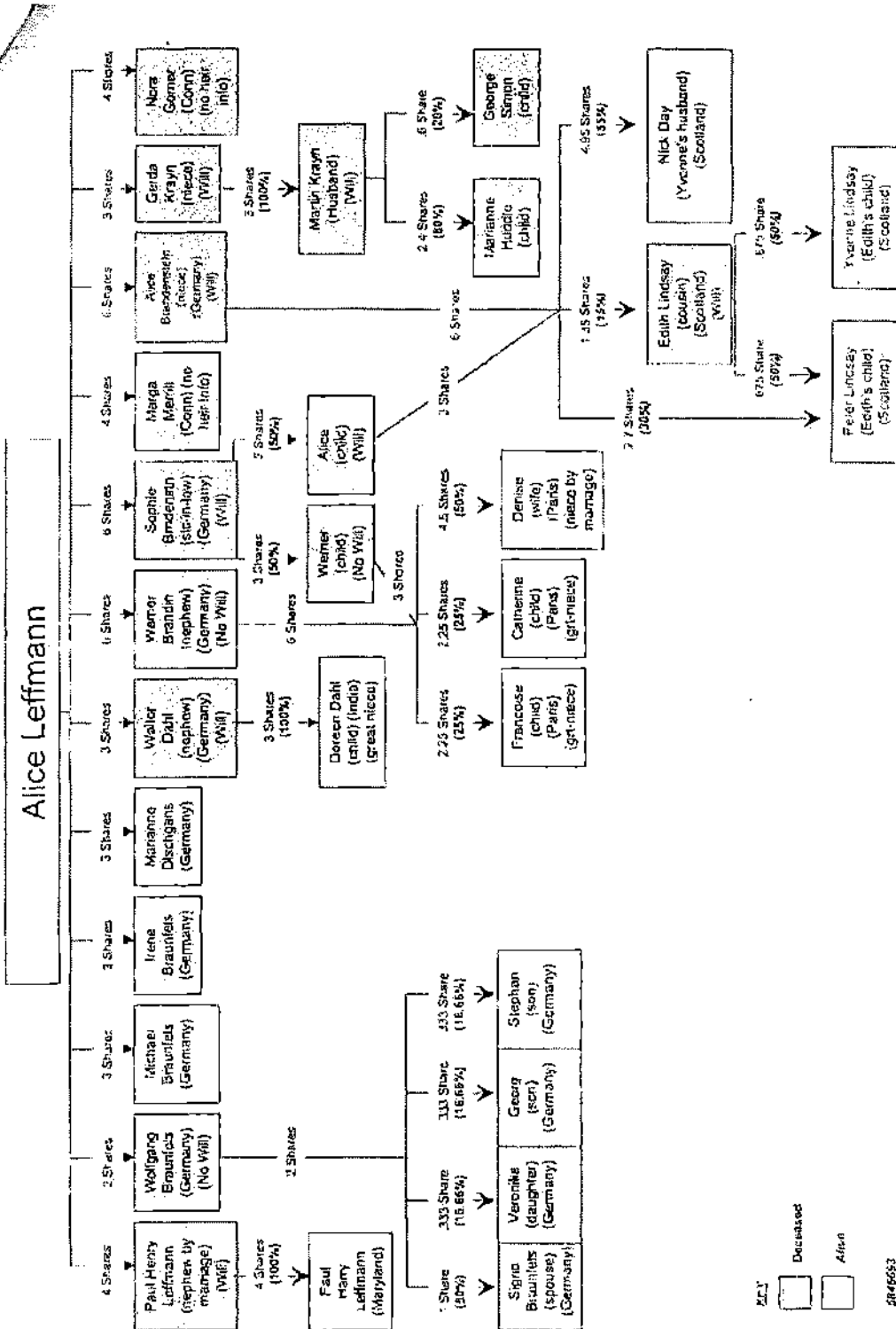
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(3/47 shares) in the estate of Alice Leffmann. Martin Krayn died in Johannesburg, South Africa on December 8, 1975 leaving a Will that was duly administered. Pursuant to Martin Krayn's Will, George Simon was bequeathed a 1/5 interest in the residue of the estate of Martin Krayn, and therefore a 1.2766% interest (0.6/47 shares) in the residue of the estate of Alice Leffmann. At this time, no further information with respect to George Simon's death or heirs can be located.

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EXHIBIT B



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EXHIBIT “F”

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New York State Surrogate's Court
New York State Bar Association Official OCA Forms

Form AP-2
Ancillary Probate Citation

File No. 2010-2964

CITATION
SURROGATE'S COURT, NEW YORK COUNTY

THE PEOPLE OF THE STATE OF NEW YORK,
By the Grace of God Free and Independent

TO: NYS Dept of
Taxation & Finance

Schweizerische Bankgesellschaft
Paul Harry Löffmann George Brauntel's
Sygnid Brauntel's Stephan Brauntel's
Kerontka Brauntel's Michael Brauntel's

Doreen Dahl
Francis e Brandin
Catherine Brandin
Denise Brandin
Peter Lindsay
Nicholas John Day

Yvonne Day
Nicholas Day

A petition having been duly filed by _____
who is domiciled at 13 Whinny Brae, Broughty Ferry, Dundee DD5 2HU, UNITED KINGDOM

YOU ARE HEREBY CITED TO SHOW CAUSE before the Surrogate's Court, New York County,
at pm 503 31 Chambers Street, New York New York, on October 5, 2010,
at 7:30 o'clock in the PM noon of that day, why a decree should not be made in the estate of
Alice Löffmann, a/k/a Alice Brandenstein-Löffmann, lately domiciled at
Steinwiesstrasse 8, Zurich, Switzerland, Switzerland
admitting to ancillary probate an exemplified copy of the Will dated November 14, 1962
(and Codicil(s), if any, dated _____),
as the Will of Alice Löffmann
deceased, relating to real and personal property, and directing that:

- Ancillary Letters Testamentary issue to: _____
- Ancillary Letters of Administration c.t.a. issue to: Laurel Zuckerman
- No Ancillary Letters to be issued
- Further relief sought (if any): _____

Dated, Attested and Sealed,
August 27, 2010

HON. Kristin Booth Glau
Surrogate

Chief Clerk Jane Passavant

Alexander M. Popovich

Print Name of Attorney

(212) 692-1400

Telephone


Horrick, Feinstein LLP
Firm
2 Park Avenue, New York, New York 10016
Address

NOTE: This citation is served upon you as required by law. You are not required to appear. If you fail to appear it will be assumed you do not object to the relief requested. You have a right to have an attorney appear for you.

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EXHIBIT "G"

A-194

 New York State Surrogate's Court
New York State Bar Association Official OCA Forms

Form AP-1

Petition for Ancillary Probate

SURROGATE'S COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Filing Fee Paid \$ _____
 Certificates Paid \$ _____
 Trustees Certs. Paid \$ _____
 Prelim. Certs. Paid \$ _____
 \$ _____ Bond, Fee: \$ _____
 Receipt No.: _____ No.: _____

ANCILLARY PROBATE PROCEEDING, WILL OF
ALICE LEFFMANN
a/k/a

PETITION FOR ANCILLARY PROBATE
(SCPA ARTICLE 16)

ALICE BRANDENSTEIN-LEFFMANN

Ancillary Letters Testamentary
 Ancillary Letters of Administration o.l.a.
 Without Ancillary Letters

a domiciliary of Switzerland Deceased

File No. _____

TO THE SURROGATE'S COURT, COUNTY OF NEW YORK

It is respectfully alleged:

1. The name, citizenship, domicile (or, in the case of a bank or trust company, its principal office) and interest in this proceeding of the petitioner(s) are as follows:
 Petitioner Information:

Name Nicholas John Day			Citizenship United Kingdom
Domicile Address: Street and Number 13 Whinny Brae			
City, Village, or Town Droughy Ferry	State Dundee	ZIP Code DD8 2HU	Country United Kingdom
Mailing Address: Street and Number			
City, Village, or Town	State	ZIP Code	Country

Interest: (Check One) Executor named in decedent's Will Creditor Other **See Attachment 1**

Name			Citizenship
Domicile Address: Street and Number			
City, Village, or Town	State	ZIP Code	Country
Mailing Address: Street and Number			
City, Village, or Town	State	ZIP Code	Country

Interest: (Check One) Executor named in decedent's Will Creditor Other

2. The name, domicile, date and place of death, and national citizenship of the above-named decedent are as follows:
 Decedent Information:

Name Alice Leffmann			Citizenship Germany
Domicile Address: Street and Number Steinwiesstrasse 8			
City, Village, or Town 8032 Zurich	State Switzerland	ZIP Code	Country Switzerland
County Viterland	Date of Death June 25, 1988	Place of Death Switzerland	

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3. Decedent left will in writing dated November 14, 1982 (and codicil(a) dated _____), which was duly admitted to probate on December 5, 1988 by the Regional Court of Zurich Court, County of _____ State of Switzerland, being a competent court of the state of the domicile of decedent having jurisdiction thereof, and the Will/Codicil is not subject to contest under the laws of the state.

On 07/15/1988, letters were issued by the court to Schweizerische Bankgesellschaft in Zurich, and the amount of the security given on the original appointment was \$ _____. Under the Will/Codicil a bond is is not dispensed with.

4. (a) The Will/Codicil upon ancillary probate may operate upon property in the State of New York consisting of real property and personal property described and valued as follows:

Personal Property:	Value
Description and Location	
Total Personal Property	\$ 0.00

Improved Real Property in New York State:	Value
Description and Location	
Total Improved Property	\$ 0.00

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Unimproved Real Property in New York State:

Description and Location	Value
Total Unimproved Property	\$ 0.00

Estimated Gross Rents for a Period of 18 months:

Description and Location	Value
Total Estimated Gross Rents	\$ 0.00

Total Estimated Value of Decedent's Property in New York **\$ 0.00**

4. (b) No other testamentary assets exist in New York State, nor does any cause of action exist on behalf of the estate, except as follows: None
 A claim for the restitution of a painting by a world renowned artist which is currently located in a museum in New York City.

Exemplified copies of the Will/Codicil, the decree admitting the Will/Codicil to probate, and the letters issued, if any, are submitted as part of this petition.

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5. The names, addresses and interests of all persons entitled to process are as follows:
[include all domiciliary creditors or domicilliaris claiming to be creditors and such persons entitled to letters pursuant to SCPA 1804]

Name			
New York State Department of Taxation and Finance			
Address: Street and Number			
Building 9, W.A. Harriman Campus			
City, Village, or Town	State	ZIP Code	Country
Albany	New York	12227	U.S.A.
Nature of Interest or Amount of Claim			
Statutory Party			
Name			
Schweizerische Bankgesellschaft In Zurich			
Address: Street and Number			
P.O. Box CH 8098			
City, Village, or Town	State	ZIP Code	Country
Zurich	Zurich		Switzerland
Nature of Interest or Amount of Claim			
Executor named in Decedant's Will			
Name			
See Attachment 2			
Address: Street and Number			
City, Village, or Town	State	ZIP Code	Country
Nature of Interest or Amount of Claim			
Name			
Address: Street and Number			
City, Village, or Town	State	ZIP Code	Country
Nature of Interest or Amount of Claim			
Name			
Address: Street and Number			
City, Village, or Town	State	ZIP Code	Country
Nature of Interest or Amount of Claim			
Name			
Address: Street and Number			
City, Village, or Town	State	ZIP Code	Country
Nature of Interest or Amount of Claim			

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6. The name and address of each domiciliary beneficiary under the Will/Codicil having an interest in this estate is as follows:

(a) Each beneficiary who is of full age and sound mind or which is a corporation or association:

Name NONE			
Address: Street and Number			
City, Village, or Town	State	ZIP Code	Country
Interest			
Name			
Address: Street and Number			
City, Village, or Town	State	ZIP Code	Country
Interest			
Name			
Address: Street and Number			
City, Village, or Town	State	ZIP Code	Country
Interest			
Name			
Address: Street and Number			
City, Village, or Town	State	ZIP Code	Country
Interest			
Name			
Address: Street and Number			
City, Village, or Town	State	ZIP Code	Country
Interest			
Name			
Address: Street and Number			
City, Village, or Town	State	ZIP Code	Country
Interest			

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6. (b) Each beneficiary who is an infant or otherwise under a disability:

Name				
Address: Street and Number				
City, Village or Town		State	ZIP Code	
Country				
Interest				
Infant	Birthdate	Person with Whom Resides	Father Living? <input type="checkbox"/> Yes <input type="checkbox"/> No Mother Living? <input type="checkbox"/> Yes <input type="checkbox"/> No	
	Court-Appointed Guardian? <input type="checkbox"/> Yes <input type="checkbox"/> No	Describe Appointment		
	Guardian Name			
	If yes, Guardian of: <input type="checkbox"/> Person <input type="checkbox"/> Property	Guardian Address		
Incompetent/Incapacitated	Facts Regarding Disability			
	<input type="checkbox"/> Committee <input type="checkbox"/> Conservator <input type="checkbox"/> Guardian	Name		
	Address			
	Name			
	Address			
	Committed to Institution? <input type="checkbox"/> Yes <input type="checkbox"/> No	Institution Name		
Institution Address				
Name of Relative/Friend with Interest in Welfare				
Address				
Prisoner	Place of Incarceration		Person with Interest in Welfare	
	Description (in same language as will be used in the process)			
Unknown				

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7. There are no persons interested in this proceeding other than those hereinbefore mentioned. No previous application for ancillary probate with or without ancillary letters has been made, except: None

WHEREFORE, petitioner(s) pray(s):

- (a) That process issue to all necessary parties
- (b) That the Will/Codicil be admitted to ancillary probate and
- (c) That ancillary letters issue thereon as follows:

Ancillary Letters Testamentary to:
Laurel Zuckerman

Ancillary Letters of Administration c.t.a. to:

No Ancillary Letters to be issued.

(d) Further relief sought (if any):

Dated: 17th August 2010

N.J. Day
Signature of Petitioner

Nicholas John Day
Print Name

Signature of Petitioner

Print Name

By _____
Signature

Print Name

Title

Signature of Petitioner

Print Name

Signature of Petitioner

Print Name

Name of Corporate Petitioner

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VERIFICATION

For use when petitioner to be appointed is an individual

STATE OF GREAT BRITAIN AND NORTHERN IRELAND }
CITY OF EDINBURGH SCOTLAND } BB.:
COUNTY OF CONSULATE GENERAL OF THE UNITED STATES OF AMERICA }

The undersigned, the petitioner named in the foregoing petition, being duly sworn, says:

VERIFICATION: I have read the foregoing petition subscribed by me and know the contents thereof, and the same is true of my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true.

My domicile is 13 Whinny Brae, Broughty Ferry, Dundee DD5 2HU, United Kingdom

N.J. Day
Signature of Petitioner
Nicholas John Day
Print Name

On 17 AUG 2010, before me personally came Nicholas John Day to me known to be the person described in and who executed the foregoing instrument. Such person duly swore to such instrument before me and duly acknowledged that he/she executed the same.

Sworn to before me this 17 day of AUGUST, 2010

[Signature]
Notary Public Dana M. Lisnet
Commission Expires: Consul
(Affix Notary Stamp or Seal)

Consulate General Edinburgh
Commission Indefinite

[Signature] Signature of Attorney Alexander M. Popovich Print Name of Attorney

Herrick, Feinstein LLP Firm (212) 592-1400 Telephone

2 Park Avenue, New York, New York 10016 Address

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COMBINED VERIFICATION, OATH AND DESIGNATION
For use when petitioner to be appointed is an individual

STATE OF _____
COUNTY OF _____

SS.:

REPUBLIC OF FRANCE CITY OF PARIS
EMBASSY OF THE UNITED STATES OF AMERICA } SS

The undersigned, the executor appointed in the foregoing petition, being duly sworn, says:

1. VERIFICATION: I have read the foregoing petition and know the contents thereof, and the same is true of my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true.

2. OATH OF ANCILLARY EXECUTOR ADMINISTRATOR c.f.a.: I am over eighteen (18) years of age and a citizen of the United States; I will well, faithfully and honestly discharge the duties of ancillary executor/administrator c.f.a. under the will. I am not ineligible to receive letters.

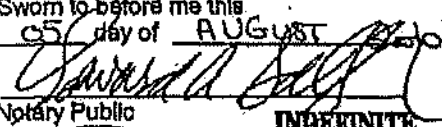
3. DESIGNATION OF CLERK FOR SERVICE OF PROCESS: do hereby designate the Clerk of the Surrogate's Court of New York County, and his or her successor in office as a person on whom service of any process issuing from such Surrogate's Court may be made, in like manner and with like effect as if it were served personally upon me, whenever I cannot be found within the State of New York after due diligence used.

My domicile is 14 Rue de la Republique, Bry-Sur-Marne, France 94360

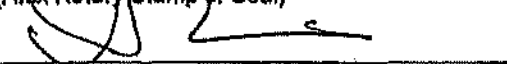

Signature of Petitioner:

Laurel Zuckerman (middle name: Jean)
Print Name

On AUGUST 05, 2016, before me personally came Laurel Zuckerman to me known to be the person described in and who executed the foregoing instrument. Such person duly swore to such instrument before me and duly acknowledged that he/she executed the same.

Sworn to before me this
05 day of AUGUST

Notary Public
Commission Expires: INDEFINITE
(Affix Notary Stamp or Seal)

Edward Gallagher
Vice Consul
US Embassy, Paris


Signature of Attorney

Alexander M. Popovich
Print Name of Attorney

Herrick, Feinstein LLP
Firm

(212) 692-1400
Telephone

2 Park Avenue, New York, New York 10016
Address

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Attachment 1

Petitioner Information

The Petitioner, Nicholas John Day, is the executor named in the Will of Alice Anna Berla Brandenstein ("Alice Brandenstein"). Alice Brandenstein is a named beneficiary under the Will of Alice Leffmann. As the executor of the Estate of Alice Brandenstein, Nicholas Day is an interested party. The co-executor named in the Will of Alice Brandenstein, Malcolm Nicholas Mitchell, is deceased. No successor has been named in his place.

Attached as Exhibit A are: (1) a certified copy of Appointment of Executors for the Will of Alice Brandenstein, (2) a certified copy of Alice Brandenstein's Will, and (3) a copy of Alice Brandenstein's death certificate. Attached as Exhibit B is a copy of Malcolm Nicholas Mitchell's death certificate.

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EXHIBIT A

A-205

14. J. Day, Executor
Wanda J. Day, Solicitor
Wanda J. Day, Solicitor
I ALICE ANNA BERTA BRANDENSTEIN of 8 Hazham Way, Shrewsbury Shropshire Retired Medical Practitioner DECLARE this to be my last Will which I make this *Tuesday first day of December* One thousand nine hundred and ninety two HEREBY REVOKING all other Wills and testamentary dispositions by me heretofore made _____

1. I APPOINT Nicholas John Day of 13 Whimpy Brae Broughty Ferry Dundee Planning Officer and Malcolm Nicholas Mitchell of 4 College Hill Shrewsbury Shropshire Solicitor (hereinafter called "my Trustees") to be the Executors and Trustees of this my Will _____

2. I GIVE to Mrs Yvonne Day of 13 Whimpy Brae Broughty Ferry aforesaid all my written manuscripts excluding any royalties being paid in respect of any manuscript published in my lifetime _____

3. I GIVE AND BEQUEATH equally between Peter Lindsay of Rue Bouney 12 69520 Embough Leige Belgium and his wife and children and Nicholas John Day and his wife and children all my personal chattels as defined by Section 33 (1) (2) of the Administration of Estate Act 1925 but exclusive of any money and securities for money but together with any royalties payable from any manuscript that may be published in my lifetime _____

4. I GIVE the following pecuniary legacies free of tax-

(a) to Ma Doreen Dahl of 14A Buckland Crescent London NW3 JDX the sum of Two thousand pounds _____

(b) to Mrs Mary Jones of 6 The Woodlands Galna Park Dكتور Heath Shrewsbury the sum of Five thousand pounds but if she shall predecease me leaving a husband or issue living at the date of my death then such husband and issue shall take the said legacy equally between them _____

(c) to Mrs Lilli Elled of Clonardway 21 Hatch End Middlesex the sum of Five thousand pounds _____

(d) to Squadron Leader J Evans of 3 Menham Way Shrewsbury the sum of Five hundred pounds but if he shall predecease me leaving a wife or issue living at the date of my death then such wife and issue shall take the said legacy equally between them _____

(e) to the Bishop of the Roman Catholic Diocese of Shrewsbury for use in the Diocese the sum of Twelve thousand pounds _____

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- (f) to the Religious Society of Friends Quaker Peace and Service Friends House Euston Road London NW1 the sum of Ten thousand pounds
- (g) to Shrewsbury and District Arts Association the sum of Three thousand pounds

I DECLARE that the receipt of the Secretary or Treasurer for the time being of the Organisations mentioned in this Clause shall be a good and sufficient discharge to my Trustees

5. SUBJECT to the payment of my funeral and testamentary expenses and debts and of any gift given by this my Will or any Codicil hereto I GIVE the residue of my property whatsoever and wheresoever unto my Trustees upon trust for sale with power to postpone such sale upon the following trusts that is to say

- (a) AS TO fifteen percent thereof to Mrs Edith Lindsay of 102 Gray Street Broughty Ferry aforesaid
- (b) AS TO fifty five percent thereof to the said Nicholas John Day
- (c) AS TO thirty percent thereof to the said Peter Lindsay

PROVIDED THAT if any the said Edith Lindsay Nicholas John Day or Peter Lindsay shall have died in my lifetime my Trustees shall hold her or his share of the said residue of my estate upon trust for his or her spouse if he or she shall survive me and if not to such of his or her children as shall be living at my death and shall attain the age of Eighteen years and if more than one in equal shares absolutely

6. TRUST moneys may be invested in the purchase of or at interest upon the security of such stocks funds shares securities or other investments or property of whatsoever nature and wheresoever (including the purchase of land) and whether involving liability or not or upon such personal credit with or without security as my Trustees shall in their absolute discretion think fit

7. ANY Executor or Trustee for the time being of this my Will being a Solicitor or other person engaged in any profession or business shall be entitled to charge retain and be paid all usual professional or other charges for business done by him or his firm in relation to the administration of my estate or the execution of the trusts hereof

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IN WITNESS whereof I have hereunto set my hand the day and year before

written _____

SIGNED by the above-named

Testatrix in our presence

and by us in her presence-

} *Anna A. Brombergstein*

*cs: H Brook Glad with Spout Sticker & Turntable
e. Pappas H Estey's Hill
Shrewsbury*

3

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N: J. Dwyer Executor *Donna H. Dwyer* Solicitor
Alice Brandenstein *Solicitor*
~~I ALICE ANNA BERTA BRANDENSTEIN~~ of 8 Hexham Way Shrewsbury

Shropshire Retired Medical Practitioner DECLARE this to be a
Codicil which I make this *11th* day of *October*
One thousand nine hundred and ninety-three to my Will which bears date
the Twenty-first day of December One thousand nine hundred and
ninety-two

1. I GIVE to Anne Layton-Cox the sum of Two thousand pounds free
of tax

2. IN all other respects I confirm my said Will

IN WITNESS whereof I have hereunto set my hand the day and year
first before written

SIGNED by the above-named
Testatrix in our presence and
by us in her presence:-

Alice Brandenstein

A. Nicholls
10, HEXHAM WAY,
SHREWSBURY, SY26BX

RETIRED CH. STAFF POLICE

H. P. Nicholls
10 Hexham Way,
Sulloch Hill,
Shrewsbury, SY26BX.

Housewife

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Application Number 1309809/2

QBDY 120520

CERTIFIED COPY OF AN ENTRY



DEATH		Entry No. 46
Registration District Stratfordbury	Administrative area Stratfordbury	
Sub-district Stratfordbury	Cause of Death Causes of Death	
1. Date and place of death 24th January 1994		
Rodman Close, Nethercliffe, Stratfordbury		
1. Name and surname Alan Ayton Ayton	2. Sex Male	3. Marital status of woman who has spouse —
4. Date and place of birth 1st January 1910		
Colony, Jamaica		
5. Occupation and usual address Medical Practitioner (retired)		
6. Usual address Wan, Stratfordbury		
7. (a) Name and address of informant Malcolm Nicholas MITCHELL	The condition causing the body to be cremated	
(c) Usual address 2-4 Colona, Wan, Stratfordbury		
8. Cause of death 1a. Lung Cancer		
Certified by P. Crow H.B.		
9. I certify that the particulars given by me above are true to the best of my knowledge and belief.		
10. City of registration Stratfordbury		11. Signature of Registrar Registrar

CERTIFIED to be a true copy of an entry in the certified copy of a register of Births, Still-births or Deaths in the District above mentioned, Given at the GENERAL REGISTER OFFICE, under the Seal of the said Office on 4th June, 2009

*If the Certificate is given from the original Register, the words "the certified copy of" are struck out.

CAUTION: THERE ARE OFFENCES RELATING TO FALSIFYING OR ALTERING A CERTIFICATE AND USING OR POSSESSING A FALSE CERTIFICATE. ©CROWN COPYRIGHT

WARNING: A CERTIFICATE IS NOT EVIDENCE OF IDENTITY.

181070 1118 0408 2008 111004



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EXHIBIT B

A-211

BAL 413371

CERTIFIED COPY OF AN ENTRY
 Pursuant to the Births and Deaths Registration Act 1953

DEATH		Entry No. 51
Registration district Shropshire		Administrative area
Sub-district Shropshire		County of Shropshire
1. Date and place of death Seventh February 2010 Royal Shrewsbury Hospital, Myton Oak Road, Shrewsbury		
2. Name and surname Malcolm Nicholas MITCHELL		3. Sex Male
		4. Maiden surname of woman who has married
5. Date and place of birth Eighteenth January 1939 Poole, Dorset		
6. Occupation and usual address Solicitor (retired) Husband of Judith Mary MITCHELL Medical Practice Manager (retired) 6 Hexham Way, Sulton Farm, Shrewsbury, Shropshire		
7.(a) Name and surname of informant Judith Mary MITCHELL		(b) Qualification Widow of deceased Present at the death
(c) Usual address 6 Hexham Way, Sulton Farm, Shrewsbury, Shropshire		
8. I certify that the particulars given by me above are true to the best of my knowledge and belief Judith Mitchell		Signature of informant
9. Cause of death 1 (a) Ischaemic Heart Disease (b) Coronary Atherosclerosis Certified by John Penhale Ellery H.M. Coroner for Mid and North-West Shropshire after post-mortem without inquest		
10. Date of registration Eleventh February 2010		11. Signature of registrar L. Moxon Deputy Registrar

Certified to be a true copy of an entry in a register in my custody.

John R. Suberton Deputy

*Superintendent Registrar
Registrar

Date - 3 AUG 2010

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Attachment 2

Section 5

The names, address and interests of all persons entitled to process are as follows:

Each of the interested persons listed below for whom we were able to obtain an address has been provided with a notice of the Petition and an Affidavit of Mailing is attached as Exhibit C.

1. **Name:** PAUL HARRY LEFFMANN
Address: 407 Murdock Road, Baltimore, MD 21212
Nature of Interest: Beneficiary
2. **Name:** SIGRID BRAUNFELS
Address: Heßstr. 22, D 80779 München, Germany
Nature of Interest: Beneficiary
3. **Name:** VERONIKA BRAUNFELS
Address: Prinzregentenstr. 9, 10717 Berlin, Germany
Nature of Interest: Beneficiary
4. **Name:** GEORG BRAUNFELS
Address: Heinrich-Könn-Straße 183, 40825 Düsseldorf, Germany
Nature of Interest: Beneficiary
5. **Name:** STEPHAN BRAUNFELS
Address: Architekten BDA, Veteranärstrasse 9, D - 80539, München, Germany
Nature of Interest: Beneficiary
6. **Name:** MICHAEL BRAUNFELS
Address: Dransdorferstr. 40, 50968 Köln, Germany
Nature of Interest: Beneficiary
7. **Name:** IRENE BRAUNFELS (believed to be deceased)
Address: N/A
Nature of Interest: Beneficiary
8. **Name:** MARIANNE DISCHGANS (believed to be deceased)
Address: N/A
Nature of Interest: Beneficiary
9. **Name:** DOREEN DAHL
Address: 14-87A Kannapan Thoppu, Vatta Kottal, Vartyoor 629 401, India
Nature of Interest: Beneficiary

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EXHIBIT C

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10. **Name:** FRANCOISE BRANDIN
Address: 15 Rue Paul Bert, 75011 Paris, France
Nature of Interest: Beneficiary
11. **Name:** CATHERINE BRANDIN
Address: 8 Avenue du Chateau de Soulls, 91800 Brunoy, France
Nature of Interest: Beneficiary
12. **Name:** DENISE BRANDIN
Address: 228 Avenue de la Division Leclerc, 95160 Montmorency, France
Nature of Interest: Beneficiary
13. **Name:** PETER LINDSAY
Address: 2 Hope Cottage, Chapel Lane, Bucklow Hill, Knutsford, Cheshire
WA16, 8RF, UK (England)
Nature of Interest: Beneficiary
14. **Name:** YVONNE DAY
Address: 13 Whinny Brae, Broughty Ferry, Dundee DD5, 2HU, UK (Scotland)
Nature of Interest: Beneficiary
15. **Name:** NICHOLAS DAY
Address: 13 Whinny Brae, Broughty Ferry, Dundee DD5, 2HU, UK (Scotland)
Nature of Interest: Beneficiary.
16. **Name:** MARGA MERRILL (believed to be deceased)
Address: N/A
Nature of Interest: Beneficiary
17. **Name:** NORA GORNER (believed to be deceased)
Address: N/A
Nature of Interest: Beneficiary
18. **Name:** MARIANNE HUDDLE (believed to be deceased)
Address: N/A
Nature of Interest: Beneficiary
19. **Name:** GEORGE SIMON (believed to be deceased)
Address: N/A
Nature of Interest: Beneficiary

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AFFIDAVIT OF MAILING NOTICE OF ANCILLARY PROBATE

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

Benjamin A. Friedman, residing at 305 East 86th Street, New York, New York 10028 being duly sworn, says that he is over the age of 18 years, that on August 16, 2010, he deposited in the post office or in a post office box regularly maintained by the government of the United States in the County of New York, State of New York, a copy of the attached Notice of Ancillary Probate contained in a securely closed postpaid wrapper directed to each of the persons named in the attachment to said notice at the places set opposite their respective names.


Signature

Benjamin A. Friedman
Print Name

Sworn to before me this
16th day of August 2010


Notary Public
Commission Expires:
(Affix Notary Stamp or Seal)

SHELBY KELLEHER
Notary Public, State of New York
No. 01KE6207081
Qualified in New York County
Commission Expires June 8, 2013

Alexander M. Popovich
Print name of attorney

Herrick, Feinstein LLP
Firm

(212) 592-1400
Telephone

2 Park Avenue, New York, New York 10016
Address

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New York State Surrogate's Court
New York State Bar Association Official OCA Forms

Form AP-3
Notice of Ancillary Probate

SURROGATE'S COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

ANCILLARY PROBATE PROCEEDING, WILL OF
ALICE LEFFMANN
a/k/a
ALICE BRANDENSTEIN-LEFFMANN

NOTICE OF
ANCILLARY PROBATE

a domiciliary of Switzerland Deceased

File No. _____

NOTICE IS HEREBY GIVEN THAT:

1. An exemplified copy of the Will dated November 14, 1982 (and Codicil(s), if any, dated _____) of the above-named decedent, domiciled at Steinwiesstrasse 8, Zurich State of Switzerland has been offered for ancillary probate in the Surrogate's Court for the County of New York

2. The name(s) of the proponent(s) of said Will/Codicil is/are Nicholas John Day
Whose address(es) is/are 13 Whinny Brae, Broughty Ferry, Dundee DD5 2HU, United Kingdom

3. The name and post office address of each and every domiciliary beneficiary of the above named decedent as set forth in Paragraph 6 of the petition is/are as follows:
[Note: If serving infant 14 years of age or older, list and mail to infant as well as parent or guardian.]

Name
See Attachment 1
Mailing Address: Street and Number

City, Village, or Town	State	ZIP Code	Country
------------------------	-------	----------	---------

Nature of Interest or Status

Name

Mailing Address: Street and Number

City, Village, or Town	State	ZIP Code	Country
------------------------	-------	----------	---------

Nature of Interest or Status

Name

Mailing Address: Street and Number

City, Village, or Town	State	ZIP Code	Country
------------------------	-------	----------	---------

Nature of Interest or Status

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3. Domiciliary Beneficiaries (continued)

Name			
Mailing Address: Street and Number			
City, Village, or Town	State	ZIP Code	Country
Nature of Interest or Status			
Name			
Mailing Address: Street and Number			
City, Village, or Town	State	ZIP Code	Country
Nature of Interest or Status			
Name			
Mailing Address: Street and Number			
City, Village, or Town	State	ZIP Code	Country
Nature of Interest or Status			
Name			
Mailing Address: Street and Number			
City, Village, or Town	State	ZIP Code	Country
Nature of Interest or Status			
Name			
Mailing Address: Street and Number			
City, Village, or Town	State	ZIP Code	Country
Nature of Interest or Status			
Name			
Mailing Address: Street and Number			
City, Village, or Town	State	ZIP Code	Country
Nature of Interest or Status			

Herrick, Feinstein LLP	Alexander M. Popovich
Firm	Print Name of Attorney
2 Park Avenue, New York, New York 10018	(212) 692-1400
Address	Telephone

A-218

Attachment 1

Section 3

The name and post office address of each and every domiciliary beneficiary of the above named decedent as set forth in Paragraph 6 of the petition is/are as follows:

There are no domiciliary beneficiaries of the Estate of Alice Leffmann. However, below is a list of the non-domiciliary beneficiaries.

1. **Name:** PAUL HARRY LEFFMANN
Address: 407 Murdock Road, Baltimore, MD 21212
Nature of Interest: Beneficiary
2. **Name:** SIGRID BRAUNFELS
Address: Heßstr. 22, D 80779 München, Germany
Nature of Interest: Beneficiary
3. **Name:** VERONIKA BRAUNFELS
Address: Prinzregentenstr. 9, 10717 Berlin, Germany
Nature of Interest: Beneficiary
4. **Names:** GEORG BRAUNFELS
Address: Heinrich-Könn-Straße 183, 40825 Düsseldorf, Germany
Nature of Interest: Beneficiary
5. **Name:** STEPHAN BRAUNFELS
Address: Architekten BDA, Veterenärstrasse 9, D - 80539, München, Germany
Nature of Interest: Beneficiary
6. **Name:** MICHAEL BRAUNFELS
Address: Dransdorferstr. 40, 50988 Köln, Germany
Nature of Interest: Beneficiary
7. **Name:** IRENE BRAUNFELS (believed to be deceased)
Address: N/A
Nature of Interest: Beneficiary
8. **Name:** MARIANNE DISCHGANS (believed to be deceased)
Address: N/A
Nature of Interest: Beneficiary
9. **Name:** DOREEN DAHL
Address: 14-87A Kannapan Thoppu, Vatta Kottai, Varyoor 629 401, India
Nature of Interest: Beneficiary

A-219

10. **Name:** FRANCOISE BRANDIN
Address: 16 Rue Paul Bert, 75011 Paris, France
Nature of Interest: Beneficiary
11. **Name:** CATHERINE BRANDIN
Address: 8 Avenue du Chateau de Soullns, 91800 Brunoy, France
Nature of Interest: Beneficiary
12. **Name:** DENISE BRANDIN
Address: 228 Avenue de la Division Leclerc, 95160 Montmorency, France
Nature of Interest: Beneficiary
13. **Name:** PETER LINDSAY
Address: 2 Hope Cottage, Chapel Lane, Bucklow Hill, Knutsford, Cheshire
WA16, 8RF, UK (England)
Nature of Interest: Beneficiary
14. **Name:** YVONNE DAY
Address: 13 Whinny Brae, Broughty Ferry, Dundee DD5, 2HU, UK (Scotland)
Nature of Interest: Beneficiary
15. **Name:** NICHOLAS DAY
Address: 13 Whinny Brae, Broughty Ferry, Dundee DD5, 2HU, UK (Scotland)
Nature of Interest: Beneficiary.
16. **Name:** MARGA MERRILL (believed to be deceased)
Address: N/A
Nature of Interest: Beneficiary
17. **Name:** NORA GORNER (believed to be deceased)
Address: N/A
Nature of Interest: Beneficiary
18. **Name:** MARIANNE HUDDLE (believed to be deceased)
Address: N/A
Nature of Interest: Beneficiary
19. **Name:** GEORGE SIMON (believed to be deceased)
Address: N/A
Nature of Interest: Beneficiary

A-220

Filing Fee \$ 45⁰⁰
 Estate Value \$ 2,100,000
 Intake Clerk \$ LM

Name of Alice Leffman Surety Co. _____
 No. 29640 2 010 Bond filed _____, 2 _____
 Filed 8/24 2 010 Surety Bond No. _____, 2 _____
 Application for Trusteeship _____, 2 _____ Amount of Bond \$ _____
 Number of Trusts _____ Bond Book L _____ P _____
 Will filed _____, 2 _____ Waivers filed _____, 2 _____
 Death Certificate filed _____, 2 _____ Notice filed _____, 2 _____
 Date of Death _____, 2 _____ Cit. Returnable 10/5, 2 010
 Decree Signed _____, 2 _____ Sup. Cit. returnable _____, 2 _____
 Letters issued _____, 2 _____
 Letters Test Issued _____, 2 _____
 Temp. Letters of Adm. Issued _____, 2 _____
 Application to dispense with witness testimony _____, 2 _____
 Objections Filed _____, 2 _____

Probate ListForm.1

NEW YORK COUNTY SURROGATE COURT
 DATA ENTRY DEPT.
 AUG 25 2018
 RECEIVED

NEW YORK COUNTY SURROGATE COURT
 RECEIPT # 175206
 DATE: 09-24-2018
 TIME: 3:25
 OPERATOR: BD
 FILE # 2018-2364
 LEFFMAN, ALICE
 PROBATE PETITION

A-221

EXHIBIT "H"

A-223



New York State Surrogate's Court
New York State Bar Association Official OCA Forms

Form AP-3
Notice of Ancillary Probate

SURROGATE'S COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

ANCILLARY PROBATE PROCEEDING, WILL OF
ALICE LEFFMANN
a/k/a
ALICE BRANDENSTEIN-LEFFMANN

NOTICE OF
ANCILLARY PROBATE

a domiciliary of Switzerland Deceased

File No. _____

NOTICE IS HEREBY GIVEN THAT:

1. An exemplified copy of the Will dated November 14, 1962 (and Codicil(s), if any, dated _____) of the above-named decedent, domiciled at Steinwiesstrasse 8, Zurich State of Switzerland has been offered for ancillary probate in the Surrogate's Court for the County of New York.

2. The name(s) of the proponent(s) of said Will/Codicil is/are Nicholas John Day
Whose address(es) is/are 13 Whinny Brae, Broughty Ferry, Dundee DD5 2HU, United Kingdom

3. The name and post office address of each and every domiciliary beneficiary of the above named decedent as set forth in Paragraph 6 of the petition is/are as follows:
[Note: If serving infant 14 years of age or older, list and mail to infant as well as parent or guardian.]

Name <u>See Attachment 1</u>			
Mailing Address: Street and Number			
City, Village, or Town	State	ZIP Code	Country
Nature of Interest or Status			
Name			
Mailing Address: Street and Number			
City, Village, or Town	State	ZIP Code	Country
Nature of Interest or Status			
Name			
Mailing Address: Street and Number			
City, Village, or Town	State	ZIP Code	Country
Nature of Interest or Status			

A-224

3. Domiciliary Beneficiaries (continued)

Name			
Mailing Address: Street and Number			
City, Village, or Town	State	ZIP Code	Country
Nature of Interest or Status			
Name			
Mailing Address: Street and Number			
City, Village, or Town	State	ZIP Code	Country
Nature of Interest or Status			
Name			
Mailing Address: Street and Number			
City, Village, or Town	State	ZIP Code	Country
Nature of Interest or Status			
Name			
Mailing Address: Street and Number			
City, Village, or Town	State	ZIP Code	Country
Nature of Interest or Status			
Name			
Mailing Address: Street and Number			
City, Village, or Town	State	ZIP Code	Country
Nature of Interest or Status			
Name			
Mailing Address: Street and Number			
City, Village, or Town	State	ZIP Code	Country
Nature of Interest or Status			

Herrick, Feinstein LLP
Firm

2 Park Avenue, New York, New York 10016
Address

Alexander M. Popovich
Print Name of Attorney

(212) 692-1400
Telephone

A-225

Attachment 1

Section 3

The name and post office address of each and every domiciliary beneficiary of the above named decedent as set forth in Paragraph 6 of the petition is/are as follows:

There are no domiciliary beneficiaries of the Estate of Alice Leffmann. However, below is a list of the non-domiciliary beneficiaries.

1. **Name:** PAUL HARRY LEFFMANN
Address: 407 Murdock Road, Baltimore, MD 21212
Nature of Interest: Beneficiary
2. **Name:** SIGRID BRAUNFELS
Address: Heßstr. 22, D 80779 München, Germany
Nature of Interest: Beneficiary
3. **Name:** VERONIKA BRAUNFELS
Address: Prinzregentenstr. 9, 10717 Berlin, Germany
Nature of Interest: Beneficiary
4. **Names:** GEDRG BRAUNFELS
Address: Heinrich-Könn-Straße 183, 40825 Düsseldorf, Germany
Nature of Interest: Beneficiary
5. **Name:** STEPHAN BRAUNFELS
Address: Architekten BDA, Veteranenstrasse 9, D - 80539, München, Germany
Nature of Interest: Beneficiary
6. **Name:** MICHAEL BRAUNFELS
Address: Dransdorferstr. 40, 50968 Köln, Germany
Nature of Interest: Beneficiary
7. **Name:** IRENE BRAUNFELS (believed to be deceased)
Address: N/A
Nature of Interest: Beneficiary
8. **Name:** MARIANNE DISCHGANS (believed to be deceased)
Address: N/A
Nature of Interest: Beneficiary
9. **Name:** DOREEN DAHL
Address: 14-87A Kannapan Thoppu, Vatta Kottai, Varyoor 629 401, India
Nature of Interest: Beneficiary

A-226

Case 1:16-cv-07665-LAP Document 13-5 Filed 11/30/16 Page 29 of 31

10. **Name:** FRANCOISE BRANDIN
Address: 15 Rue Paul Bert, 75011 Paris, France
Nature of Interest: Beneficiary
11. **Name:** CATHERINE BRANDIN
Address: 8 Avenue du Chateau de Soullins, 91800 Brunoy, France
Nature of Interest: Beneficiary
12. **Name:** DENISE BRANDIN
Address: 228 Avenue de la Division Leclerc, 95160 Montmorency, France
Nature of Interest: Beneficiary
13. **Name:** PETER LINDSAY
Address: 2 Hope Cottage, Chapel Lane, Bucklow Hill, Knutsford, Cheshire
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Nature of Interest: Beneficiary
14. **Name:** YVONNE DAY
Address: 13 Whinny Brae, Broughty Ferry, Dundee DD5, 2HU, UK (Scotland)
Nature of Interest: Beneficiary
15. **Name:** NICHOLAS DAY
Address: 13 Whinny Brae, Broughty Ferry, Dundee DD5, 2HU, UK (Scotland)
Nature of Interest: Beneficiary.
16. **Name:** MARGA MERRILL (believed to be deceased)
Address: N/A
Nature of Interest: Beneficiary
17. **Name:** NORA GORNER (believed to be deceased)
Address: N/A
Nature of Interest: Beneficiary
18. **Name:** MARIANNE HUDDLE (believed to be deceased)
Address: N/A
Nature of Interest: Beneficiary
19. **Name:** GEORGE SIMON (believed to be deceased)
Address: N/A
Nature of Interest: Beneficiary

A-227

Filing Fee \$ 45⁰⁰
 Estate Value \$ 2,100,000
 Probate Clerk \$ LM

Name of Alice Leffman Surety Co _____
 Case No. 29640 2 010 Bond filed _____, 2 _____
 Petition Filed 8/24 2 010 Surety Bond No _____, 2 _____
 Petition for Trusteeship _____, 2 _____ Amount of Bond \$ _____
 Number of Trusts _____ Bond Book L _____ P _____
 Will filed _____, 2 _____ Waivers filed _____, 2 _____
 Return Certificate filed _____, 2 _____ Notice filed _____, 2 _____
 Date of Death _____, 2 _____ Cit. Returnable 10/5, 2 010
 Petition Signed _____, 2 _____ Sup. Cit. returnable _____, 2 _____
 Orders Issued _____, 2 _____
 Probate Letters Test Issued _____, 2 _____
 Temporary Letters of Adm Issued _____, 2 _____
 Application to dispense with witness testimony _____, 2 _____
 Objections Filed _____, 2 _____

Probate Ltrs Form 1

RECEIVED
 AUG 25 2010
 New York County Surrogate's Court
 DATA ENTRY DEPT.

NEW YORK COUNTY SURROGATE'S COURT
 RECEIPT # 175206
 DATE: 08-24-2010
 TIME: 08:25
 OPERATOR: 60
 FILE # 2010-2964
 LEFFMAN, ALICE
 PROBATE PETITION

A-228

Case 1:16-cv-07665-LAP Document 13-5 Filed 11/30/16 Page 31 of 31

SURROGATE'S COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

File No. 2010-2964

Petition of The Metropolitan Museum of Art to Vacate the
Decree, dated October 18, 2010, Granting Ancillary Letters
of Administration c.l.a. in the Estate of

ALICE LEFFMANN,

Deceased

PETITION TO VACATE DECREE

FARRELL FRITZ, P.C.
1320 RXR Plaza
Uniondale, NY 11556
516-227-0700

*This certification, pursuant to 22 N.Y.C.R.R. Part 130-1.1-a,
applies to the following papers contained within this back:*

Petition to Vacate Decree

Signed: 

Hillary A. Frommer, Esq.

Dated: November 21, 2016

A-229

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
LAUREL ZUCKERMAN, AS ANCILLARY
ADMINISTRATRIX OF THE ESTATE OF
ALICE LEFFMANN,

Plaintiff,

vs.

THE METROPOLITAN MUSEUM OF ART,

Defendant.
----- x

Index No. 16-civ-07665 (LAP)

**NOTICE OF INTENT TO RELY
ON ITALIAN LAW
PURSUANT TO FRCP 44.1**

PLEASE TAKE NOTICE that Plaintiff, pursuant to Fed. R. Civ. P. 44.1, intends to rely upon Italian law in support of Plaintiff's Amended Complaint, including the 1865 Italian Civil Code and the 1942 Italian Civil Code.

Dated: New York, New York
January 20, 2017

Respectfully submitted,

HERRICK, FEINSTEIN LLP

By: /s/ Lawrence M. Kaye
Lawrence M. Kaye
Howard N. Spiegler
Ross L. Hirsch
Yael M. Weitz

2 Park Avenue
New York, New York 10016
Tel: (212) 592-1410
Fax: (212) 592-1500
Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----		x
	:	
LAUREL ZUCKERMAN, AS ANCILLARY	:	
ADMINISTRATRIX OF THE ESTATE OF	:	16-cv-07665 (LAP)
ALICE LEFFMANN,	:	
	:	
Plaintiff,	:	
	:	
vs.	:	
	:	
THE METROPOLITAN MUSEUM OF ART,	:	
	:	
Defendant.	:	
-----		x

**MEMORANDUM OF LAW IN OPPOSITION TO
DEFENDANT'S MOTION TO DISMISS**

HERRICK, FEINSTEIN LLP
Lawrence M. Kaye
Howard N. Spiegler
Ross L. Hirsch
Yael M. Weitz
2 Park Avenue
New York, New York 10016
Tel: (212) 592-1400
Fax: (212) 592-1500
Attorneys for Plaintiff

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Plaintiff Laurel Zuckerman, as Ancillary Administratrix of the estate of Alice Leffmann (the "Leffmann estate"), through the undersigned counsel, Herrick, Feinstein LLP, respectfully submits this memorandum in opposition to the motion of the Metropolitan Museum of Art (the "Museum" or "Defendant") to dismiss Plaintiff's Amended Complaint (the "Complaint").

PRELIMINARY STATEMENT

This is a dispute over the ownership of a masterwork by Pablo Picasso entitled "The Actor" (*L'Acteur*) (the "Painting"), which is currently in the permanent collection of, and on display at, the Museum. Through its motion, the Museum falsely depicts the 1938 sale of the Painting as a run-of-the-mill commercial transaction in which a wealthy individual sold a painting in the open market at fair value to fund his international travels. This transaction, however, did not occur in a normal place, at a normal time, under normal circumstances.

This saga begins with Plaintiff's great granduncle and aunt, Paul and Alice Leffmann, a Jewish couple thriving in Germany until the Nazis ravaged all semblance of peace and normalcy. As alleged in the Complaint, they were stripped of almost all of their wealth, their livelihood and their property by the Nazis and fled for their lives to Italy — only to be confronted with an increasingly anti-Semitic Fascist regime. Not long after the Leffmanns arrived, Mussolini and Hitler formed a strong alliance, and Fascist Italy began to keep careful track of the German Jews who had sought refuge there. Paul and Alice were forced to flee yet again, this time to Switzerland, which refused to grant them permanent residency, and then to Brazil. It was during this dark period for Jews (especially German Jews) in Italy that Paul Leffmann sold *The Actor* in 1938 — under duress, for well below its value, in order to finance their escape from persecution. The Leffmanns' story is like that of many other Jews in Germany in the 1930's — except, unlike most and due in large part to the funds raised by the sale of the Painting — they survived.

It is through the prism of these dire circumstances enveloping Europe between 1933 and

1945 that the “sale” of The Actor must be scrutinized. Upon doing so, it is clear that the sale was compelled by the Nazi and Fascist persecution to which the Leffmanns, and many others, were subjected. Tribunals and commissions throughout the world, as well as over 40 nations at international conferences (including in the United States), have recognized the need for special protection of Jews who sold artwork under duress during the Nazi era — including those forced to sell to fund their escape. These determinations are predicated on the understanding that the circumstances were so menacing that the artworks must be deemed to have been sold under duress — and that those possessing the works now should not be able to shield them from their rightful owners by relying on technical defenses reliant on, for example, the passage of time.

That the Nazi era is unique, and that artwork lost during that era must be treated as such, is a key tenet of U.S. policy and law. On December 16, 2016, President Obama signed the Holocaust Expropriated Art Recovery (HEAR) Act of 2016,¹ creating a federal statute of limitations for claims to artwork lost due to persecution by the Nazis and their allies to allow for such claims to be heard on their merits rather than be stymied by “procedural obstacles.” In recognizing the “unique and horrific circumstances of World War II and the Holocaust,” Congress drew upon the Terezin Declaration, reflecting the principles agreed upon by 46 nations at the Holocaust Era Assets Conference in 2009, and the Washington Conference of 1998, where 44 nations convened and produced the “Principles on Nazi-Confiscated Art.” The HEAR Act embraced the core tenet of the Washington Principles, reaffirmed in the Terezin Declaration, that it is essential to “facilitate just and fair solutions with regard to Nazi-confiscated and looted art, and to make certain that claims to recover such art are resolved expeditiously and based on the facts and merits of the claims . . .” *Id.* at § 2(5)-(6).

¹ Holocaust Expropriated Art Recovery Act of 2016, Pub. L. No. 114-308 (2016).

This important principle was similarly emphasized in the landmark opinion in *Schoeps v. Museum of Modern Art & the Solomon R. Guggenheim Museum*, 594 F. Supp. 2d 461 (S.D.N.Y. 2009). Presented with circumstances parallel to those here, Judge Rakoff addressed a challenge to a decades-old transfer of artworks by a Jew in Germany as the Nazi vise was tightening. On the defendants-museums' summary judgment motion, the Court rejected a laches defense as "inappropriate at this stage," and held that the German laws concerning public order and duress applied, leaving to the jury the ultimate question of whether plaintiffs' predecessor-in-interest would have transferred the paintings were it not for his fear of persecution. In doing so, the Court treated a transfer under duress during the Nazi era as it would a theft — *i.e.*, if duress under German law was proven, even though voidable under German law, no good title could be obtained under New York law by the museums that later acquired the paintings. Significantly, the Court's decision was "informed by the historical circumstances of Nazi economic pressures brought to bear on 'Jewish' persons and property." *Id.* at 467.

In contrast, the Museum's motion fails to acknowledge the context of Leffmanns' *June 1938* sale: in *February 1938*, the Fascist government announced that it would closely observe newly-arrived Jews such as the Leffmanns; in *May 1938*, Hitler, himself, marched in a grand parade through Florence where the Leffmanns resided; in *July 1938*, the Leffmanns submitted their "Directory of Jewish Assets," as required by the Reich; and by *September 1938*, Italy codified anti-Semitic racial laws forbidding aliens like the Leffmanns from residing in Italy. (Compl., ¶¶ 25-41). Nevertheless, the Museum depicts the sale of the Painting as a "freely negotiated" purchase for "value" on the "international art market." These callous assertions reverberate in the Museum's submission, in which it depicts the Leffmanns, not as refugees saddled by desperate hardships forcing them to flee, but as rich retirees traveling in comfort.

The Museum's flippancy is not just reflected in its tone, but also in the dismissiveness in which it addresses the legal issues. There is an undercurrent of "Plaintiff just waited too long." To be clear, Plaintiff does not ask the Court to override precedent or ignore the law. Rather, Plaintiff asks the Court to apply the pertinent law informed by historical circumstances, rather than reject the claims at the outset *because* of those circumstances. Especially when viewed through this lens, the Museum's arguments are not viable as a matter of law:

1) *Standing*: On the eve of filing its motion — and more than *six years* after Plaintiff was duly appointed by the Surrogate's Court of New York County as the "Ancillary Administratrix" for the Leffmann estate, consistent with the procedures of such court, and without objection from any person interested in the estate, despite court-issued notice — the Museum moved in Surrogate's Court to vacate Ms. Zuckerman's appointment. This tact rings loudly of sharp practice, especially considering that the Museum has *no standing* in Surrogate's Court, as a matter of statutory law, to challenge the Letters of Administration; and, even if it had standing, the Museum fails to invoke any valid statutory basis for vacating the appointment years later. The proceeding before this Court should not be "stayed" or otherwise impeded by the Museum's "Hail Mary" effort to strip away the rights of the Leffmann estate via collateral proceedings.

2) *Timeliness*: The Museum argues that the claims for replevin and conversion are barred by the statute of limitations because Plaintiff delayed in making her demand. This argument is not only mooted by the limitations period codified in the HEAR Act, but also constitutes a gross misapplication of New York's settled "demand-and-refusal" rule. It is also a direct affront to U.S. policy, as reflected in the Terezin Declaration.

Likewise, the Museum's invocation of the equitable doctrine of laches not only assaults the notion of resolving Nazi-era claims on their merits, but also asks the Court to grant

extraordinary relief — *i.e.*, dismissing a case based on laches on a pre-answer motion to dismiss. As the Court recognized in *Schoeps*, laches is a generally determined by a fact-intensive inquiry at trial as to the conduct of both plaintiff and defendant — an examination which would look into the historical context of the Nazi era and would consider the heightened expectation of diligence attributed to a museum confronted with artwork sold in Europe during the Holocaust era.

3) *Duress*: The Museum applies New York law on duress to evaluate the 1938 sale of the Painting by Paul Leffmann even though this transaction lacks any connection to New York. As demonstrated below, Italian law must be applied, and under the applicable Italian law — read through the lens of historical context, as it must be (and, as it was in *Schoeps*) — good title to the Painting was not transferred by Leffmann based upon the allegations in the Complaint. Accordingly, pursuant to New York law — which both parties agree applies to the subsequent transfer of the Painting to the Museum — title remains with the Leffmann estate.

The Museum's efforts to dispose of this claim — based on out-of-place technical arguments, an application of New York law to a transaction without a tie to this forum, and an end-run to Surrogate's Court — should not deprive the Leffmann estate of its day in court.

STATEMENT OF ALLEGED FACTS

Plaintiff respectfully refers to the Complaint, rather than re-state the detailed allegations. Though the Museum purports to “accept Plaintiff's allegations as true” for purposes of this motion, it actually modifies them in a misleading manner. For example:

- The Museum describes in its memorandum of law (“Br.”) the 1938 purchasers of the Painting and their agent as “Jewish,” citing the Complaint — even though Plaintiff made no such allegation. (Br. at 6, 1). The Museum injects religion to suggest that a sale between Jews could not have been made under duress or as a result of persecution. This implication is not only out of bounds on a motion to dismiss, but it is also false and insensitive to historical context.
- The Museum proclaims that the Painting “has been displayed at the Museum since Foy donated it in 1952” (Br. at 15, 19), implying that was a fact known to the

Leffmanns. That “fact” is not alleged in the Complaint, and the corresponding implication is baseless. The Museum should know better given the turmoil and uncertainty facing Jews in the post-Holocaust (and pre-internet) era.

- The Museum further states — citing the Complaint, which says nothing of the sort — that the “German professor” erroneously listed on the Museum’s provenance as the owner of the Painting (instead of Paul Leffmann) was the Leffmanns’ friend who had custody of the Painting in Switzerland. (Br. at 6, *citing* Compl. ¶¶ 62, 14).
- The Museum argues that “Plaintiff’s allegations make clear that Leffmann had additional assets and other alternatives” (Br. at 13), suggesting that the sale of the Painting was a normal business decision disconnected from the need to fund their escape — even though the Complaint alleges to the exact contrary. (Compl. ¶ 47).

The Museum’s effort to sanctify its conduct, and that of the original purchaser of the Painting, is inappropriate on this motion, especially through false citations to the Complaint.

ARGUMENT

I. THE MUSEUM’S COLLATERAL ATTACK IS SPECIOUS; NO STAY OR DISMISSAL WITHOUT PREJUDICE IS WARRANTED

The Museum’s lead argument is that the Court should dismiss the Complaint, or put it on indefinite hold, because the Museum filed a “petition” in Surrogate’s Court, on November 21, 2016, to vacate the appointment of Plaintiff as Ancillary Administratrix for the Leffmann estate — an appointment made more than six years ago in October 2010. This collateral proceeding will likely take, as advised by Plaintiff’s special Surrogate’s Court counsel, 1-2 years for the parties’ submissions to be adjudicated. This prejudicial delay tactic is inconsistent with the principles of fairness and justness embedded in U.S. policy, as reflected in the HEAR Act, the Washington Principles, and the Terezin Declaration. Reasons abound for rejecting the Museum’s effort to halt this case based on its meritless “capacity and standing” argument:²

First, as alleged in the Complaint (¶ 4), Plaintiff is the duly appointed representative of

² Though the Museum effectively avoided this Court’s page limit by annexing its Surrogate’s Court’s Petition, Plaintiff has not been able to make a submission in Surrogate’s Court because the Surrogate’s Court has still not, two months after receipt of the Petition, issued the “Citation” setting the return date. This is reflective of the backlog in the Surrogate’s Court.

the Leffmann estate pursuant to the “Decree Granting Ancillary Probate” from the Surrogate’s Court of New York County, dated October 18, 2010, granting ancillary probate and issuing ancillary letters of administration to Laurel Zuckerman on the Leffmann estate. (Bowker Decl., Ex. B). As per Section 703 of the New York Surrogate’s Court Procedure Act (“SCPA”), these letters are “conclusive evidence of the authority of the persons to whom they are granted . . .” SCPA § 703; *see Windbourne v. Eastern Air Lines, Inc.*, 479 F. Supp. 1130, 1156 (E.D.N.Y. 1979), *rev’d on other grounds*, 632 F.2d 219 (2d Cir. 1980); *Capozzola v. Oxman*, 216 A.D.2d 509, 510 (2d Dep’t 1995); *Allen v. Fiedler*, 96 A.D.3d 1682, 1684 (1st Dep’t 2012).

In contrast, the Museum’s cited cases involve the inapposite scenario in which a plaintiff *had not been duly appointed* in Surrogate’s Court — and thus the trial court found that she must first obtain such authority before suing in a representative authority. *See, e.g., Schoeps v. Andrew Lloyd Webber Art Found.*, 17 Misc. 3d 1128(A), 2007 WL 4098215, at *4 (Sup. Ct. 2007) (“plaintiff will have to convince the Surrogate’s Court that he qualifies to be appointed the personal representative”), *aff’d*, 66 A.D.3d 137 (1st Dep’t 2009); *Gayle v. NYS Div. of Parole*, 95 Civ. 10552, 1997 WL 53156, at *1 (S.D.N.Y. Feb. 10, 1997).³

Second, though the Museum argues that Plaintiff lacks standing, it is *the Museum* that, as a matter of statutory law, *has no standing to challenge Plaintiff’s appointment* in Surrogate’s Court. SCPA § 711 only allows a “co-fiduciary, creditor, person interested, any person on behalf of an infant or any surety on a bond of a fiduciary” to petition to vacate letters of administration.⁴ Where the only connection to the estate is that the petitioner is “*a defendant in an action*

³ *Cf. Abercrombie v. Andrew Coll.*, 438 F. Supp. 2d 243 (S.D.N.Y. 2006) (declining to abstain, in lieu of slow Surrogate’s Court proceeding, just because such court may find that plaintiff should not be the administratrix); *Keane v. Mixer*, 202 Misc. 1025, 1028 (Sup. Ct. 1952).

⁴ “Person interested” is a defined term, effectively meaning a person having a beneficial interest in an estate. SCPA § 103(39).

commenced by the estate,” the petitioner “*does not qualify as a party who may petition a court for revocation of letters of administration pursuant to SCPA 711.*” *In re Menis*, 137 A.D.2d 692, 692 (2d Dep’t 1988) (emphasis added); *see also In re Chabrier*, 281 A.D.2d 346 (1st Dep’t 2001). As in *Menis*, the Museum has no standing in Surrogate’s Court just because it is the defendant in this case. The Museum’s Petition is void of any allegation of standing. Rather than argue the impossible, the Museum ignores this deficiency.

Third, the Museum does not allege, much less substantiate, grounds for revocation under SCPA § 711 (e.g., plaintiff is a felon or acted dishonestly), which “prescribes the only grounds upon which the Surrogate may lawfully make a decree affecting a fiduciary’s letters.” 2 *New York Civil Practice: SCPA* ¶ 711.0, at 7-102; *see also In re Palma*, 40 A.D.3d 1157, 1158 (3d Dep’t 2007) (“the grounds for disqualification are limited to those specified in SCPA 707 and 711”). Although the Surrogate’s Court has discretion under SCPA § 719 to revoke letters in certain other circumstances, none of them (§ 719(1)–(9)) applies here or is even alleged. To the extent that the Museum seeks to rely on § 719(10) (“[w]here any of the facts provided in 711 are brought to the attention of the court”) as a “catch-all,” that position fails because: (a) a ground under § 711 must be demonstrated, which it is not; and (b) as the Appellate Division recognized in *Menis*, that provision is not a back-door for those without standing. *Menis*, 137 A.D.2d at 692-93; *see also Palma*, 40 A.D.3d at 1158. The Museum’s lack of standing and failure to allege any ground for revocation precludes consideration by the Surrogate’s Court. *See, e.g., In re McCann*, NYLJ, June 16, 2015, p. 27, col. 6 (Sur. Ct.) (unsubstantiated claim about capacity does not give standing pursuant to SCPA 719[10]).

Fourth, even if it had standing, the Museum’s arguments are meritless. The parties agree that this Court is without authority to adjudicate the validity of Plaintiff’s appointment, and

Plaintiff will be prepared to defend her appointment in Surrogate's Court. In addition to the grounds referenced above, Plaintiff will show that: (a) the Swiss bank (Schweizerische Bankgesellschaft, now UBS AG) named as the executor of Alice Leffmann's Will, has had no involvement with the estate since 1966 and, as the Surrogate's Court was advised in 2010, disavows responsibility and has refused to participate in the New York proceedings; (b) Plaintiff's appointment was in accordance with New York law; (c) Plaintiff's appointment was consistent with Swiss law;⁵ (d) the Museum is mistaken and misses the point in stating that Plaintiff has no residuary interest in the estate;⁶ and (e) the identified beneficiaries were provided with court-issued citations providing notice of Plaintiff's appointment in 2010 (Bowker Decl., Ex. F)—in response to which no one appeared, intervened, objected, or appealed.

The Surrogate's Court *will* dismiss the Museum's Petition. However, that may take a substantial period of time. No "stay" is warranted here pending that inevitable result.

II. PLAINTIFF'S CLAIMS ARE TIMELY

The Museum's threshold, technical arguments are without merit.

A. The HEAR Act Moots the Museum's Statute of Limitations Argument

The Museum's statute of limitations argument is now moot pursuant to the Holocaust Expropriated Art Recovery (HEAR) Act of 2016, passed unanimously by Congress and signed into law by President Obama on December 16, 2016. By way of background, the HEAR Act was designed to address Congressional concerns that Holocaust-era claims have been unfairly hindered by "procedural obstacles" such as the statute of limitations, which restrict claims from

⁵ In Surrogate's Court, Plaintiff will be prepared to introduce Swiss law through an affidavit of foreign law, in contrast to the Museum's passing reference to the "advice of Swiss counsel."

⁶ Since Plaintiff was the designee of a person entitled to designate under SCPA § 1604, it is irrelevant whether she had a residuary interest in the estate. Thus, the Museum's reliance on this issue is both a red herring and factually mistaken, as will be shown to the Surrogate's Court if and when appropriate.

being heard on the “facts and merits.” Congress specifically recognized the “unique and horrific circumstances of World War II and the Holocaust,” which make “statutes of limitations especially burdensome to the victims and their heirs”:

Those seeking recovery of Nazi-confiscated art must painstakingly piece together their cases from a fragmentary historical record ravaged by persecution, war, and genocide. This costly process often cannot be done within the time constraints imposed by existing law.

Thus, the stated purpose of Act is clear:

(1) To ensure that laws governing claims to Nazi-confiscated art and other property further United States policy as set forth in the Washington Conference Principles on Nazi-Confiscated Art, the Holocaust Victims Redress Act, and the Terezin Declaration.

(2) To ensure that claims to artwork and other property stolen or misappropriated by the Nazis are not unfairly barred by statutes of limitations but are resolved in a just and fair manner.⁷

To accomplish these goals, the HEAR Act preempts all other provisions of federal or state law or any defense at law “relating to the passage of time,” and provides instead for a six year statute of limitations in art recovery cases from the Nazi era. The law is drafted to broadly apply to “any artwork or other property that was ‘lost,’” “throughout Europe,” beginning on January 1, 1933 and ending on December 31, 1945, “because of Nazi persecution,” which is defined to include persecution by *allies* of the Nazi Party.⁸ The limitation period accrues upon the claimant’s *actual* discovery of: the identity of the artwork; the location of the artwork; *and* the claimant’s possessory interest in that property. *Id.*, at § 5(a). For claims already pending in court, the law will deem such claimants to have had the requisite “actual knowledge” as of the

⁷ Holocaust Expropriated Art Recovery Act of 2016, Pub. L. No. 114-308, §§ 2-3 (2016).

⁸ Similarly, the foundational Terezin Declaration addressed artworks lost “through various means including theft, coercion and confiscation, and on grounds of relinquishment as well as forced sales and *sales under duress*” as a result of “Nazi persecution,” which is defined to include “the Nazis, the *Fascists* and their collaborators.” Prague Holocaust Era Assets Conference: Terezin Declaration (June 30, 2009), <http://www.state.gov/p/eur/rls/or/126162.htm> (emphasis added).

Act's date of enactment—December 16, 2016. *Id.*, at § 5(c)(2).

Here, there is no question that: (a) the Complaint alleges that the Leffmanns lost the Painting in 1938 because of the persecution by the Nazis and their Fascist allies (*e.g.*, Compl. ¶¶ 3, 9, 26-28, 42, 47); and (b) Plaintiff's claim was pending as of the date of the Act's enactment. Accordingly, pursuant to the terms of the HEAR Act, Plaintiff's claims are timely and the Museum is barred from raising the state statute of limitations to avoid resolution on the merits.⁹

B. The Statute of Limitations Has Not Run

In any event, any effort by the Museum to argue that somehow Plaintiff's claims are exempt from the HEAR Act would be futile because the claims are timely under New York law.

The Leffmann estate, as the rightful owner of the Painting, asserts claims for conversion and replevin. New York courts have long recognized that, for these claims, “the cause of action against a person who lawfully comes by a chattel arises, not upon the stealing or the taking, but upon the defendant's refusal to convey the chattel upon demand.” *Menzel v. List*, 49 Misc. 2d 300, 304 (Sup. Ct. 1966), *mod.*, 28 A.D.2d 516 (1st Dep't 1967), *aff'd*, 24 N.Y.2d 91 (1969). This rule, known as the “demand and refusal rule,” is the governing law in New York. *Solomon R. Guggenheim Found. v. Lubell*, 77 N.Y.2d 311, 317-18 (1991); *Kunstsammlungen Zu Weimar v. Elicofon*, 678 F.2d 1150, 1161 (2d Cir. 1982).

The applicable three-year statute of limitations (New York CPLR § 214) does not accrue until after the Leffmann estate demands the return of the Painting *and* the Museum refuses to return it. As alleged, the Leffmann estate demanded the return of the Painting on September 8, 2010. (Compl. ¶ 66). On February 7, 2011, the Museum and the Leffmann estate entered into a standstill agreement tolling any statute of limitations as of February 7, 2011. (*Id.*, at ¶ 67). The

⁹ The Complaint did not allege the “actual discovery” date because the HEAR Act was not yet law when this action began. Such an allegation is unnecessary now because the date of the Act's enactment governs existing claims, but Plaintiff will amend if the Court deems it necessary.

standstill agreement was terminated on September 30, 2016, the day that Plaintiff commenced this action. The action is therefore timely. (*Id.*). Nevertheless, the Museum asserts that the governing demand and refusal rule does not apply. The Museum is wrong:

First, the Museum aims to eviscerate the demand and refusal rule by arguing that it cannot be invoked to “revive a stale claim.” A claim cannot be stale if it has not yet accrued and, as shown, the claim here does not accrue until after demand and refusal. Likewise, the Museum’s suggestion that the rule is inapplicable when the plaintiff has “delay[ed] in making his demand” undercuts the rule at its core — imposing obligations on the true owner, including “due diligence,” where they do not belong. This is directly contrary to the law that “the issue of ‘unreasonable delay’ is relevant only to the defense of laches,” not the statute of limitations. *Grosz v. Museum of Modern Art*, 772 F. Supp. 2d 473, 482-83 (S.D.N.Y.), *aff’d*, 403 F. App’x 575 (2d Cir. 2010), *citing Republic of Turkey v. Metropolitan Museum of Art*, 762 F. Supp. 44, 46 (S.D.N.Y. 1990); *see also Hoelzer v. City of Stamford, Conn.*, 933 F.2d 1131, 1137 (2d Cir. 1991).¹⁰ In *Republic of Turkey*, the Museum tried a similar tact, arguing that the owner of stolen property must demand its return within a reasonable time. In rejecting the argument, the Court found that it had no bearing on the limitations period. 762 F. Supp. at 46.

Second, the Museum relies on *SongByrd, Inc. v. Estate of Grossman*, 206 F.3d 172 (2d Cir. 2000), to assert that because it has “openly exercised ownership of the Painting,” demand and refusal are not necessary. If the Museum was correct, mere possession would constitute “conversion,” vitiating the demand and refusal rule entirely. *See Lubell*, 153 A.D.2d at 146-47.

¹⁰ The Museum relies on *Austin v. Bd. of Higher Educ.*, 5 N.Y.2d 430, 422-43 (1959), which pertains to an Article 78 proceeding, not a claim for replevin or conversion. The Museum’s only other case on this point — *In re Peters*, 34 A.D.3d 29, 37 (1st Dep’t 2006) — clarifies, contrary to the Museum’s argument, that a “reasonable diligence” requirement is only pertinent in the context of a laches defense.

In *Songbyrd*, a musician delivered recordings to a record executive “as demonstration tapes only, without any intent for either the [executive or the record company] to possess these aforementioned tapes as owner.” *SongByrd*, 206 F.3d at 174. Against the musician’s wishes, the company licensed the recordings to another label which, in turn, released an album of them. The Court ruled that the limitations period accrued when “the character of [the record company’s] possession had changed by its actions in treating the master tapes as its own.” *Id.* at 183. The shift, by the company’s deliberate action, from custodian-for-the rightful-owner to owner-with-authority-to-license, triggered the accrual. The irreversible *shift in character* of the possession was deemed equivalent to a wrongful taking, thus dispensing of the need for demand and refusal.

Here, there was no affirmative “change” in the “character” of the Museum’s possession, as the Museum concedes (“The Museum has openly exercised ownership and dominion over the Painting since 1952,” Br. at 18). There was not an equivalent shift from permissive custodian (*i.e.*, with the true owner’s knowledge and consent) to self-declared owner — unlike in the cases cited by the Museum. Thus the *Songbyrd* line of cases has no application here.¹¹

Third, the Museum argues that it is exempt from the demand and refusal rule because the Complaint alleges that the Museum acted “in bad faith in its acquisition of the Painting.” (Br. at 19). Plaintiff makes no such allegation. There are no allegations in the Complaint — including in Paragraphs 56-65, relied upon by the Museum — that the Museum acquired the Painting unlawfully, upon a taking or theft, or otherwise in bad faith.

Therefore, the demand and refusal rule applies. In the seminal decision in *Menzel*, the

¹¹ In *Sporn v. MCA Records*, 58 N.Y.2d 482, 488 (1983), the Court of Appeals confronted a similar dispute where a master recording was leased to a record company with the understanding that it would be returned, but instead was sold along with the company and used by the new record company as part of a movie soundtrack. The sale of the recordings — again evidencing a radical shift from consensual possessor to “usurper” of plaintiff’s rights — triggered the statute of limitations. There is no parallel transformative event here.

court held that the demand and refusal rule applies as against a person who “lawfully comes by chattel,” as opposed to by “stealing” or “taking.” 49 Misc. 3d at 304. When a person acquires a chattel unlawfully, the limitations period accrues upon such unlawful act. As the Second Circuit reaffirmed in *Grosz*, the critical query is whether the defendant “lawfully comes by a chattel” or was a “bad faith purchaser.” 403 F. App’x. at 577. As the plaintiff in *Grosz* did not allege that MoMA was a bad faith purchaser — as is the case here — the Second Circuit confirmed that the demand and refusal governed. *Id*; see also *Grosz*, 772 F. Supp. 2d at 481 (rule that statute of limitations runs on date of “theft or bad faith acquisition” inapplicable absent allegation that MoMA purchased the works with knowledge that they had been stolen”); *Lubell*, 153 A.D.2d at 146-47 (the limitations period runs immediately upon theft).¹²

C. The Premature Laches Argument Wrongly Presumes Unreasonableness

The Museum argues that Plaintiff’s claims are barred by laches, invoking the “unreasonable delay” argument that it relied on (contrary to law) for the statute of limitations. However, laches cannot be raised because this claim was brought within the time allowed by the statute of limitations codified by the HEAR Act. *Petrella v. Metro-Goldwyn-Mayer, Inc.*, 134 S. Ct. 1962, 1974 (2014) (laches unavailable as a defense if the claim is brought within pertinent federal limitations period). Even if laches could be invoked, the Museum’s argument fails:

First, the determination of laches is premature. The Museum must demonstrate that the Leffmanns and their heirs unreasonably delayed in starting this action, that the Museum suffered undue prejudice as a result, and that the equities tip in its favor. *U.S. v. Portrait of Wally*, 99 Civ. 9940 (MBM), 2002 WL 5535532, at *22 (S.D.N.Y. Apr. 12, 2002). Though “unreasonable delay” is an appropriate consideration in evaluating a laches defense *at trial*, it generally has no

¹² The Museum not only mischaracterizes the Complaint as alleging unlawful acquisition, but, in doing so, tries to “take refuge behind the shield of [its] own wrong.” This alone defeats its statute of limitations argument. See *General Stencils v. Chiappa*, 18 N.Y.2d 125, 127 (1966).

place in a motion to dismiss. Unless a complaint leaves no doubt — which is certainly not the case here — the laches inquiry mandates a fact-intensive inquiry into plaintiff's conduct (as to the reasonableness of the “delay”) and that of defendant (as to “undue prejudice,” and the balancing of the equities):

[A] determination that a claim is barred by laches requires a factual inquiry into the reasons for plaintiff's delay and the extent and nature of the prejudice suffered by defendant as a result of that delay. Again, this inquiry is inappropriate on a motion to dismiss. Thus, the Court rejects defendant's argument that plaintiff's claims are barred by laches.

Deere & Co. v. MTD Prods., Inc., 00 Civ. 5936 (LMM), 2001 WL 435613, at *2 (S.D.N.Y. Apr. 30, 2001) (internal citations omitted); *see also Portrait of Wally*, 2002 WL 553532, at *22 (Laches showing would “involve a fact-intensive inquiry into the conduct and background of both parties in order to determine the relative equities. Such issues are often not amenable to resolution on a motion for summary judgment, let alone a motion to dismiss”).

Unsurprisingly, not one case cited by the Museum is in the context of a pre-discovery motion to dismiss. Indeed, in its primary source — *Bakalar v. Vavra*, 619 F.3d 136 (2d Cir. 2010) — laches was evaluated in the context of a bench trial. When laches had been raised on summary judgment, the *Bakalar* Court found that laches was “an issue for trial,” as it was premature to determine whether delay was excusable and whether plaintiff had been prejudiced. *Bakalar v. Vavra*, 05 Civ. 3037 (WHP), 2006 WL 2311113, at *3-4 (S.D.N.Y. Aug. 10, 2006).¹³

In *Schoeps*, MoMA and the Solomon R. Guggenheim Foundation argued, on a motion for summary judgment, that the heirs of a German Jew could not seek the return of Picasso paintings alleged to have been transferred as a result of Nazi dress. The Court rejected the laches

¹³ *In re Peters*, 34 A.D.3d 29 (1st Dep't 2006), pertaining to a summary proceeding for pre-action disclosure, is the only laches case cited by the Museum relating to a pre-answer motion. In stark contrast to this case, it had already been factually established in *Peters* that petitioner had actual, continuing knowledge of the identity of the possessor of the artwork (who was an individual, not an institution such as the Museum).

defense, holding that the reasonableness of the delay, including as to whether the owner knew that there was a potential claim to the paintings, was a matter for trial. 594 F. Supp. 2d at 468.¹⁴

The Museum seeks to avoid a trial of these issues by declaring that the “delay” was presumptively unreasonable and to imply (without any basis in the Complaint, or otherwise) that the Leffmanns knew the Painting was on display at the Museum. (Br. at 19-20). As the Court recognized in *Schoeps*, the deprivation of Plaintiff’s day in court, especially to reclaim what was lost in the Holocaust era, is not something that can be accomplished based on mere supposition.

Second, the Museum’s reliance on *Bakalar* is further misplaced because critical to the laches analysis was defendant’s status as “an ordinary non-merchant purchaser of art” with “no obligation to investigate the provenance” of the artwork. *Bakalar*, 819 F. Supp. 2d 293, 306 (S.D.N.Y. 2011), *aff’d*, 500 F. App’x 6 (2d Cir. 2012). Here, Defendant is the Metropolitan Museum of Art. The equitable laches analysis is not simply about plaintiff’s delay; it is also about defendant’s conduct. *Portrait of Wally*, 2002 WL 553532, at *22 (laches determinations “involve a fact-intensive inquiry into the conduct and background of both parties in order to determine the relative equities”); *see also Schoeps*, 594 F. Supp. 2d at 468. Unlike standard commercial actors in the ordinary course, institutions such as the Museum must act with a higher degree of diligence and responsibility — especially given the directives to museums about buying or accepting art misappropriated during the Nazi era issued by the American Commission for the Protection and Salvage of Artistic and Historic Monuments in War Areas (also known as the “Roberts Commission”) and the U.S. Department of State. (Compl. ¶ 64).

¹⁴ Of further note is the New York Court of Appeals’ decision in *In re Flamenbaum*, 22 N.Y.3d 962, 965 (2013), involving a dispute over a gold tablet stolen from a German museum during WWII. The New York Court of Appeals held that defendant could not establish its laches defense, explaining that plaintiff had valid reasons for not taking every step possible to track down the tablet, and that defendant failed to prove that, had the plaintiff taken such steps, the tablet would have surfaced earlier.

Likewise, the Museum's conduct should be measured in the context of the principles of the American Alliance of Museums ("AAM"), by which the Museum is accredited, and the Association of Art Museum Directors ("AAMD"), of which the Museum is a member — principles correlated to the Washington Principles. For example, recognizing that a museum's mission is to serve the public, AAM's "Standards Regarding Unlawful Appropriation of Objects During the Nazi Era" dictate that museums identify, research, and make the provenance available for all objects in its possession transferred in Europe during the Nazi era. (Conpl. ¶ 65).

More broadly, the Museum acquires many works regularly, either through donation or purchase, qualifying it as an institution with "knowledge and experience in the art trade" with a higher duty of inquiry and diligence. *Brown v. Mitchell-Innes & Nash, Inc.*, No. 06 Civ. 7871(PAC), 2009 WL 1108526 (S.D.N.Y. April 24, 2009); *see also Davis v. Flagstar Cos.*, 124 F.3d 203 (7th Cir. 1997); *R.F. Cunningham & Co. v. Driscoll*, 7 Misc. 3d 234 (City Ct. 2005); 2 Anderson U.C.C. § 2-104:35 (3d ed. 2011); *cf. DeWeldon, Ltd. v. McKean*, 125 F.3d 24 (1st Cir. 1997). Thus, the Museum had a heightened duty of inquiry and standard of care regarding the Painting's provenance. Faulty and careless scholarship, if established, would evince a failure to meet the requisite level of due diligence.

Third, the Museum's laches defense is further barred by the doctrine of unclean hands. *Schoeps*, 594 F. Supp. 2d at 468 (genuine issue of fact existed as to whether museums "had reasons to know that the Paintings were misappropriated and so are barred from invoking laches by the doctrine of 'unclean hands'"); *see generally Aris-Isotoner Gloves, Inc. v. Berkshire Fashions, Inc.*, 792 F. Supp. 969, 970 (S.D.N.Y. 1992), *aff'd*, 983 F.2d 1048 (2d Cir. 1992). As alleged, the Museum — given its resources, relationships, expertise, and status as a museum that holds its collection in the public trust — should have discovered, through due diligence,

Leffmann's continuous ownership up until 1938, and the circumstances under which he was compelled to dispose of the Painting because of Nazi and Fascist persecution. Nonetheless, the Museum's published provenance for the Painting, delayed until 1967, was manifestly erroneous for 45 years. (Compl. ¶¶ 56-58). Notwithstanding the governmental directives and warnings referenced above, the Museum failed to meet its obligations as to its possession of the Painting.

III. THE MUSEUM'S LACK OF GOOD TITLE IS SUFFICIENTLY ALLEGED

The Museum's argument that it has good title to the Painting as a matter of law rests on two fatal premises: (a) good title passed through the 1938 sale of the Painting, a conclusion reached through the application of New York law to a transaction without connection to New York, and as to which the applicable law (Italian law) differs; and (b) the historical context of the Leffmanns' plight during the Holocaust era is irrelevant (though, as *Schoeps* held, it is critical).

A. New York Law Does Not Govern the 1938 Transaction

At the Complaint's core is the allegation that, "[a]s a matter of law and public policy, good title to the Painting never passed from Leffmann to Perls and Rosenberg, and thus neither Perls, Rosenberg nor Foy could convey good title to the Painting. Therefore, the Museum never acquired good title to the Painting, and it remains the property of the Leffmann estate." (Compl. ¶ 55). Thus, at issue are two distinct transactions: (a) Paul Leffmann's sale of the Painting in 1938 to Käte Perls, acting on behalf of Hugo Perls and Paul Rosenberg (Compl. ¶ 37) (the "1938 Transaction"); and (b) the Museum's acquisition of the Painting in 1952, via donation from Thelma Chrysler Foy (Compl. ¶ 54) (the "1952 Transaction"). Whether or not the Museum obtained good title through the 1952 Transaction cannot be determined without first, independently, examining the validity of the 1938 Transaction.

The Museum clearly errs as a matter of law by conflating the two transactions, applying New York law to the entire series of events. This conflation disregards the need to bifurcate the

choice of law analysis. Under the doctrine of “*depeçage*,” as applied by New York courts, “the rules of one legal system are applied to regulate certain issues arising from a given transaction or occurrence, while those of another system regulate other issues.” *Bigio v. Coca-Cola Co.*, 675 F.3d 163, 169 (2d Cir. 2012) (quoting *Fieger v. Pitney Bowes Credit Corp.*, 251 F.3d 386, 397 n.1 (2d Cir. 2001)); *Golden v. Wyeth, Inc.*, No. 04-CV-2841 (JS) (ARL), 2013 WL 4500879, at *3 (E.D.N.Y. Aug. 20, 2013). The doctrine recognizes that in a single action, different fora “may have different degrees of interests with respect to different operative facts and elements of a claim or defense.” *2002 Lawrence R. Buchalter Alaska Trust v. Philadelphia Fin. Life Assur. Co.*, 96 F. Supp. 3d 182, 200 (S.D.N.Y. 2015).

Further, particular tort claims may be “mixed” in that distinct issues *within that claim* require the application of separate law. That is, “[t]here is no reason why all issues arising out of a tort claim must be resolved by reference to the law of the same jurisdiction.” *Weizmann Inst. of Sci. v. Neschis*, 229 F. Supp. 2d 234, 249-50 (S.D.N.Y. 2002). In *Weizmann*, the Court recognized that New York law governed the plaintiffs’ conversion and tortious interference with contract claims because the acts giving rise to those claims occurred in New York. However, the Court looked to Lichtenstein law to evaluate the validity of the underlying contract — as the contract had no connection to New York. *Id.*; see also *Lund’s Inc. v. Chem. Bank*, 870 F.2d 840, 845-46 (2d Cir. 1989) (applying the law of Minnesota and New York to separate issues underlying a conversion claim when issues pertaining to the underlying partnership originated in Minnesota); *Babcock v. Jackson*, 12 N.Y.2d 473, 484 (1963) (“there is no reason why all issues arising out of a tort claim must be resolved by reference to the law of the same jurisdiction”); cf. *Don King Prods. v. Douglas*, 742 F. Supp. 741 n.30 (S.D.N.Y. 1990).

Indeed, in *Schoeps*, the Court bifurcated the choice of law analysis, finding that though

German law governed the initial transfer alleged to have been made under duress, there was a “separate issue of what law governs the validity and legal effect” of the subsequent transfer. 594 F. Supp. 2d at 467-68. The Court determined that New York law applied to the subsequent transfer, as the paintings had been shipped to New York where the purchaser resided.

Here, the parties agree that New York law applies to the 1952 Transaction, but, pursuant to choice of law principles (and common sense), New York law cannot govern the 1938 Transaction — which did not have any connection to New York.

B. Italian Law Governs the 1938 Transaction

As jurisdiction in this case is predicated on diversity of citizenship, New York’s choice-of-law rules apply. In tort cases, New York courts have adopted an “interest analysis” to determine which jurisdiction has the “greate[st] interest in having its law applied in the litigation.” *In re Dr. Reddy’s Labs, Ltd.*, 01 Civ. 10102 (LAP), 2002 WL 31059289, at *10 n.8 (S.D.N.Y. Sept. 13, 2002), citing *Ackerman v. Price Waterhouse*, 252 A.D.2d 179, 192 (1st Dep’t 1998). Under this flexible approach, “the significant contacts are, almost exclusively, the parties’ domiciles and the locus of the tort.” *Id.* (internal citations omitted). The locus “is determined by where the plaintiffs’ injuries occurred.” *Id.* (internal citations omitted). “The place in which the injury is deemed to have occurred ‘is usually where the plaintiff is located.’” *Id.*, citing *Cromer Fin. Ltd. v. Berger*, 158 F. Supp. 2d 347, 357 (S.D.N.Y. 2001) (quoting *Odyssey Re (London) Ltd. v. Stirling Cooke Brown Holdings Ltd.*, 85 F. Supp. 2d 282, 292 (S.D.N.Y. 2000)); see also *Bower v. Sheraton Overseas Mgmt. Corp.*, 07 Civ. 2348 (LAP), 2009 WL 734021, at *2 (S.D.N.Y. Mar. 19, 2009). Moreover, courts not only “may consider a spectrum of significant contacts,” but also may “consider public policy ‘where the policies underlying conflicting laws in a contract dispute are readily identifiable and reflect strong governmental interests.’” *Brink’s Ltd. v. S. African Airways*, 93 F.3d 1022, 1030-31 (2d Cir.

1996). Thus, “controlling effect is accorded to the law of the jurisdiction ‘which has the greatest concern with, or interest in, the specific issue raised in the litigation.’” *John v. Sotheby’s, Inc.*, 858 F. Supp. 1283, 1289 (S.D.N.Y. 1994) *aff’d*, 52 F.3d 312 (2d Cir. 1995).

In *Schoeps*, in order to determine the choice of law on the question of whether the initial transfer of the paintings was the “product of duress or other invalidity,” the Court undertook an interest analysis and also considered the “center of gravity test” for contract claims. *Schoeps*, 594 F. Supp. 2d at 468. The Court determined that the law of Germany — where the transferors were located — governed this question even though there were other jurisdictions involved, including Switzerland, where, as here, the paintings may have been located. *Id.*

Ultimately, the focus of the interest analysis is on which jurisdiction has the greatest interest in having its policies, which underlie the relevant laws, apply based on the facts. Here, applying an interest analysis (or the hybrid test used in *Schoeps*), it is clear that Italian law applies to the question of whether the 1938 Transaction was the product of duress or other invalidity. Like Germany in the *Schoeps* case, Italy has the most significant interest in determining the validity of a sale: (i) by residents of *Italy*; (ii) who had come to *Italy* to find a (hopefully permanent) safe haven; (iii) were forced to sell the Painting to fund their flight from *Italy*; (iv) necessitated by increasing violence and persecution of Jews in *Italy* by the Nazis and their Fascist allies. The circumstances as to the sale are Italian-centric. Italy — certainly not New York — has the greatest governmental and policy interest in addressing the historic wrongs.¹⁵

The Museum asserts that there is no conflict of law, and that New York law thus necessarily applies regardless of the choice of law analysis. This is not true — contrary to the

¹⁵ That the Painting was being held in Switzerland for safekeeping or that the purchasers were French (their exact whereabouts at the time are not known and are thus not alleged) does not alter this analysis — other than reaffirming the absence of connection for New York.

Museum's cursory, inaccurate presentation of Italian law (made without including the referenced law, translations, or an affidavit of foreign law).¹⁶ As summarized below — and, in greater detail, in the annexed Declaration of Professor Marco Frigessi di Rattalma (“Decl.”), which explains the applicable law and jurisprudence, and debunks the Museum's presentation — Italian law is distinct from New York law. Italian law includes the concepts of “public order,” “public morals,” and third-party duress that, as they have been interpreted, support Plaintiff's claims.

C. The 1938 Transaction is Void under Italian Public Order Law; Good Title Cannot Pass To the Museum Through the 1952 Transaction

The sale of the Painting was *void ab initio* under Italian law because it was contrary to public order — a component of Italian statutory law overlooked by the Museum. (Decl. ¶¶ 4, 15, 30, 38, 74). “Public order” is composed of the rules and principles that the Italian legal system considers indispensable for the protection of the public interest, and is intended to constrict the contractual autonomy of individuals to the extent that exchanges are inconsistent with the fundamental values of the Italian legal system. The concept of what violates the “public order” shifts over time, shaped by judges “in a manner reflecting the changing habits and sentiments of the citizens: in short, a collective social consciousness.” (Decl. ¶¶ 7, 20-22).

As pertinent here, the Italian legal system would not recognize the validity of a contract in which a purchaser has obtained an imbalanced price taking advantage of the state of necessity and the dire circumstances of the seller. This is especially true when these circumstances involve the Holocaust — a context not lost on the Italian legal system which developed a specific set of post-War rules providing for particularly strong protections of Jewish individuals persecuted by

¹⁶ Besides taking issue with the Museum's assertion that New York and Italian law are identical, Plaintiff also disagrees with the Museum's characterization of New York law on duress based on its effort to analogize the circumstances here. *See, e.g., Hugo V. Lowei, Inc. v. Kips Bay Brewing Co.*, 63 N.Y.S.2d 289, 290 (Sup. Ct. 1946) (Museum equates economic wartime pressure felt by a brewery in the U.S. to that of the state of fear endured by Jews fleeing in Europe).

the anti-Semitic laws, based on the rationale that Jewish individuals, during the Holocaust era are considered *de jure* as weak contractual parties and, more generally, *per se* as persons subjected to violence. The sale of the Painting for well below its actual value out of a desperate need to raise the funds to finance the Leffmanns' flight from Italy, and to survive Nazi and Fascist persecution is, under Italian law, void as against "public order." (Decl. ¶¶ 28-30, 33-36, 38). Under Italian law, a void contract may not be subsequently ratified. (Decl. ¶¶ 39-40).

The 1938 Transaction is also void under Italian law as against "public morals," referring to the social, moral and ethical requirements on which a society is based. Transactions contrary to the fundamental rules of public morality have no legal effect. As alleged, the 1938 Transaction was against "public morals," in that the Painting was sold to the prejudice of the seller, "a German Jew on the run from Nazi Germany living in Fascist Italy," where the purchaser had good reason to know that the "low price reflected the seller's desperate circumstances and the extraordinary prevailing conditions." (Decl. ¶¶ 4, 15, 24-26, 29, 30, 38, 74).

Since the 1938 Transaction is *void* under Italian public order law, it is impossible for the Museum to have acquired good title through the 1952 Transaction under New York law, which the parties agree applies to the 1952 transaction. *See, e.g., Smith v. Reid*, 134 N.Y. 568 (1892); *Overton v. Art Fin. Partners LLC*, 166 F. Supp.3d 388, 399-400 (S.D.N.Y. 2016); *Brown*, 2009 WL 1108526, at *4; *Candela v. Port Motors, Inc.*, 208 A.D.2d 486 (2d Dep't 1994). This alone sustains the Complaint and will ultimately mandate the Painting's return.

D. The 1938 Transaction was a Sale Under Nazi Duress Pursuant to Italian Law; Good Title Thus Cannot Pass to the Museum Under *Schoeps*

Ignoring Italian public order law, the Museum argues that the 1938 Transaction is, at most, voidable due to duress, and that the Leffmanns "ratified" the transaction by "receiving and retaining the proceeds" and not making "a claim" for the Painting. The Museum is mistaken in

its: (a) presentation of the Italian law on duress; (b) presumption of fact as to what the Leffmanns knew and could have done; (c) characterization of New York law on the effect of Nazi-era duress on title (as reflected in *Schoeps*); and (d) refusal to acknowledge historical context.

(1) Even If The 1938 Transaction Was Not Void (Which It Was), and Was Merely Voidable Under Italian Duress Law, It Was Not Ratified

Under Italian law, the 1938 Transaction was alternatively made under duress. Duress need not emanate from a particular person nor involve a direct threat or physical compulsion to the person who entered into the contract. The perceived duress may arise from a social environment, a government or political regime (like that of the Fascists), or even from a powerful criminal organization, like the Mafia. Italian law considers this type of third party “violence” or duress to be “moral or political violence.” The latter is defined as a “state of fear” generated by a political party or regime. Furthermore, the violence does not have to be presently occurring or imminent (it can lurk in the future, although it may not be a mere supposition). (Decl. ¶¶ 4, 42-44, 46-49, 58-60, 74). Under these standards, the Complaint sufficiently alleges that the 1938 Transaction was made under the duress of Nazi and Fascist persecution — to fund their flight from Italy in the face of, *inter alia*, Hitler marching in a parade down the streets of Florence, a Fascist regime increasingly and aggressively implementing the Nazi ideology of anti-Semitic policies, and heightened surveillance and monitoring of Jews, especially foreign Jews like the Leffmanns. The threat posed to the Leffmanns placed them in a very real and objective state of fear. This is cognizable duress under Italian law. (Decl. ¶¶ 4, 58-60, 64).

As a duress sale is voidable under Italian law, there is the question of whether the Leffmanns ratified the 1938 Transaction.¹⁷ Under Italian law, a sale by duress may only be

¹⁷ Though the language of the pertinent Italian Civil Code states that a sale made under duress is “void,” commentators have interpreted the statute to render such sales voidable and thus subject to ratification. (Decl. ¶¶ 66, 67). As the 1938 Transaction is void as contrary to public order, the

ratified if *after* the duress has ceased, the affected party makes an *explicit* declaration that he intends to ratify the contract or spontaneously performs an open contractual obligation. Here, after the duress ceased, there is no allegation (nor could there be) that the Leffmanns made such a declaration or performed a contractual obligation. Instead, it is alleged that the Leffmanns needed the sale proceeds to fund their flight from Italy into Switzerland and then to Brazil because the great majority of their assets were gone, either stripped by the Nazis or dissipated by the growing web of taxes, transfer losses, fees and “payments” that became part of their everyday lives as refugees. (Compl., ¶¶ 2, 15-21, 28, 46-47). An Italian court would not find that the Leffmanns had “ratified” the sale, as the Museum argues, by “accept[ing] the benefits of the contract” — while under duress — to fund an escape from genocide. (Decl. ¶¶ 68-73).

The Museum’s other “evidence” is that the Leffmanns failed to repudiate the contract within five years or make “any claim for the Painting, despite the fact the Painting has been displayed at the Museum since Foy donated it.” Italian law does not deem “inaction,” or the lack of repudiation, as ratification, and, further, would not impose normal principles of commercial law on elderly Jews returning to war-torn Europe. (Decl. ¶¶ 71, 72). The Museum’s “ratification” argument is also reliant on improperly presumed facts — *i.e.*, that the Leffmanns had a viable avenue for making a claim for the Painting and that the Leffmanns knew its location.¹⁸

(2) The Schoeps Analysis: Nazi Era Duress Treated Like Theft

Judge Rakoff’s analysis in *Schoeps* is instructive as to the effect on subsequent transactions of a disposition of artwork made under Nazi-era duress, voidable under foreign law:

viability of Plaintiff’s claim can be decided without reaching ratification, but it is discussed herein in the context of the alternative theory of duress.

¹⁸ *Cf. In re Peters*, 34 A.D.3d 29 (1st Dep’t 2006) (petitioner had actual, continuing knowledge of the possessor of the artwork). The Museum’s heavy reliance on *Peters* is further misplaced as that case had absolutely nothing to do with duress or ratification. *Id.*

1) The Court evaluated the initial 1935 transfer of the paintings under German law, addressing both the Civil Code provision dealing with duress — which would render the transfer voidable — and the public order statute which states that a contract is *void ab initio* if it is “entered into when one party is at a distinct disadvantage in bargaining.”

2) The Court concluded that, despite the “meagre” record on summary judgment, the claimants had “adduced competent evidence sufficient to create triable issues of fact,” including as to duress — *i.e.*, whether the paintings were only transferred “because of threats and economic pressures by the Nazi government.” *Id.*

3) The Court directed that the status of the 1935 sale be “informed by the “historical circumstances of Nazi economic pressures brought to bear on ‘Jewish’ persons and property.” *Id.*

4) Through this lens, the Court found, without any discussion of ratification or repudiation, that if the 1935 sale was made under Nazi-era duress under German law, good title would *not* pass to the subsequent purchaser in 1936 under New York law. This finding was based on the principle that: “New York case law has long protected the right of the owner whose property has been stolen to recover that property, even if it is in possession of a good-faith purchaser for value.” *Id.*, citing *Lubell* 77 N.Y.2d at 317; see also *Menzel*, 49 Misc. 2d 314-15.

In other words, Judge Rakoff found that Nazi-era duress as to the disposition of artwork by Jews, if established under applicable foreign law and even if “voidable” under such law, should be treated as the equivalent of theft, thus barring, under New York law, subsequent good faith purchasers from obtaining good title of this “stolen property.”

(3) The *Schoeps* Analysis Adheres to U.S. and International Law and Policy

Judge Rakoff’s analysis is consistent with the principles underlying the Washington Principles and the Terezin Declaration (issued the same year as *Schoeps*). At the Washington

Conference on Holocaust Era Assets in 1998, Stuart Eizenstat, the Special Adviser to the Secretary of State for Holocaust Issues (and former U.S. Ambassador to the European Union), emphasized, like Judge Rakoff, that the Holocaust is different:

We can begin by recognizing this as a moral matter — we should not apply the ordinary rules designed for commercial transactions of societies that operate under the rule of law to people whose property and very lives were taken by one of the most profoundly illegal regimes the world has ever known.¹⁹

Building on this sentiment, the Terezin Declaration, in the preamble to the section on “Nazi Confiscated and Looted Art” equates, as did the court in *Schoeps*, “looted art” (i.e., stolen art) with sales made under duress of Nazi and the Fascist persecution during the Holocaust era:

art and cultural property of victims of the Holocaust (Shoah) and other victims of Nazi persecution was confiscated, sequestered and spoliated, by the Nazis, the *Fascists* and their collaborators through various means including theft, coercion and confiscation, and on grounds of relinquishment as well as forced sales and sales under duress, during the Holocaust era between 1933-45 . . .²⁰ (Emphasis added).

The Ninth Circuit, assessing the impact of the Washington Principles and Terezin Declaration, acknowledged that, though not binding treaties, they reflect U.S. policy and are key tenets of U.S. restitution law. In reversing the dismissal of a suit against the Norton Simon Museum for the return of paintings lost in 1940 by a Jewish collector-dealer through a “forced sale,” the Court found that litigation should provide “an opportunity to achieve a just and fair outcome to rectify the consequences of the forced transaction with Göring during the war.” *Von Saher v. Norton Simon Museum of Art*, 754 F.3d 712, 723 (9th Cir. 2014). The Court, relying on the Washington Principles and the Terezin Declaration as “U.S. policy on the restitution of Nazi-

¹⁹ <http://fcit.usf.edu/HOLOCAUST/RESOURCE/assets/art.htm>.

²⁰ Prague Holocaust Era Assets Conference: Terezin Declaration (June 30, 2009), <http://www.state.gov/p/eur/rls/or/126162.htm> (emphasis added).

looted art,” stated that “every effort [should] be made to rectify the consequences of wrongful property seizures, such as confiscations, forced sales and sales under duress.” *Id.*

A critical component of this effort to rectify the consequences is not holding War-era Jews responsible for their “inaction” following the War. The Senate Report for the HEAR Act acknowledges that “the special circumstances created by Nazi persecution necessitate an opportunity for [the] temporary waiver” of “defenses at law related to the passage of time.” S. Rep. No. 114-394, at 9 (2016). The Act (§ 2(6)), itself, recognizes that expecting the prompt action of a normal commercial actor would be improper under the circumstances:

Those seeking recovery of Nazi-confiscated art must painstakingly piece together their cases from a fragmentary historical record ravaged by persecution, war, and genocide. This costly process often cannot be done within the time constraints imposed by existing law.

Consonant reasoning — *i.e.*, recognizing the horrible uniqueness of the Holocaust and its aftermath, and promoting the adjudication of Nazi-era claims on the merits — was invoked in the equitable tolling context in *Rosner v. U.S.*, 231 F. Supp. 2d 1202, 1208-09 (S.D.Fla. 2002), involving a claim for the return of property expropriated from Jews by the Nazi-aligned Hungarian government. In *Rosner*, the claimants argued that “the brutal reality of the Holocaust, and the resulting extraordinary circumstances that Plaintiffs were forced to endure, merit[ed] application of equitable tolling in this case.” The court found that equitable tolling should apply, noting that “for the majority of Plaintiffs, the years following World War II were particularly difficult.” Likewise, in *Bodner v. Banque Paribas*, 114 F. Supp. 2d 117, 135-36 (E.D.N.Y. 2000), the court noted that: “[P]laintiffs argue that the Holocaust, World War II, and the subsequent diaspora of the French Jewish community constitute extraordinary circumstances in and of themselves sufficient to invoke the doctrine of equitable tolling. . . This Court, under its powers in equity, finds that application of the equitable tolling provisions is merited in this case.”

When confronted with the “merits” of analogous claims, restitution tribunals and commissions in Europe have repeatedly held that art sold by Jews under Nazi-era duress should be restituted to the original owners or their families. A few examples provided below are illustrative, and the victims’ stories are strikingly similar to the experiences of the Leffmanns:

- On January 12, 2005, the German Advisory Commission for the Return of Cultural Property Seized as a Result of Nazi Persecution recommended the restitution of three Karl Blechen paintings and a watercolor by Anselm Feuerbach to the heirs of Julius and Clara Freund because the paintings had been sold under duress in 1942 due to financial difficulties resulting from Nazi persecution.
- On April 25, 2013, the Netherlands’ Advisory Committee on the Assessment of Restitution Applications for Items of Cultural Value and the Second World War (the “Restitutions Committee”) recommended the restitution of an artwork by Maerten Fransz. van der Hulst to the heirs of Richard Semmel who was forced to flee Germany in 1933 to avoid persecution, and subsequently sold part of his art collection. The Restitutions Committee found that the auction of Semmel’s paintings, “while at first sight prompted by economic factors, cannot be seen separately from Semmel’s persecution by the Nazi regime in Germany.”
- On May 3, 2010, the Restitutions Committee recommended the restitution of a Jan Brueghel painting to the heirs of Max Stern, a Jewish art dealer who sold his trading stock and private collection under orders by German authorities to close his business. The Committee advised “that the circumstances in which Stern found himself in late 1936 and throughout 1937 . . . were so menacing and dangerous that had he succeeded in selling the claimed painting during this period, it should be considered to have been under duress.” The Committee also found “that any such sale would have been intended to raise funds for his flight.”²¹

It is exactly these “historical circumstances of Nazi economic pressures brought to bear on ‘Jewish’ persons and property,” that the court was referring to in *Schoeps*. These cases involve Jews, who, like the Leffmanns, were forced to flee Nazi persecution and to part with their belongings in order to survive their flight. These restitution tribunals and commissions throughout Europe understand, much like the court did in the *Schoeps* case, and as reflected in U.S. policy, that the actions taken by persecuted Jews can only be evaluated in this context.

²¹ See https://www.kulturgutverinste.de/Content/06_Kommission/EN/Empfehlungen/05-01-12-Recommendation-Advisory-Commission-Freund-Germany.pdf?__blob=publicationFile&v=8; http://www.restitutiecommissie.nl/en/recommendations/recommendation_rc_3126.html; http://www.restitutiecommissie.nl/en/recommendations/recommendation_196.html.

(4) The *Schoeps* Analysis Applied Here: Good Title Did Not Pass to the Museum

An application of Judge Rakoff's analysis in *Schoeps*, consistent with U.S. law and policy, is thus warranted here in evaluating whether good title passed to the Museum:

1) The Court should evaluate the initial 1938 Transaction under Italian law (which derives, like the German code, from the Napoleonic Code), addressing both the provision dealing with duress and the public order statute which would render the Transaction void.

2) In addressing both statutes, the Court should conclude, based on the Complaint, that the Plaintiff has satisfied the elements of a claim, including that the 1938 Transaction is void as against public order, and the Painting was only transferred because of, and to escape, the threats and economic pressures of the Nazis and their Fascist allies — *i.e.*, duress.

3) The Court's analysis should be "informed by the historical circumstances" of Nazi and Fascist economic pressures brought to bear on Jewish persons and property.

4) Through this lens, the Court should find, based on the allegations in the Complaint, that the 1938 Transaction is: (a) void under Italian law on public order and public morals; and, alternatively, (b) voidable under Italian law on duress, and, applying the *Schoeps* analysis, good title to the Painting did not pass to the Museum through the 1952 Transaction under New York law.

CONCLUSION

For the reasons set forth herein, Plaintiff respectfully requests that this Court deny Defendant's motion.

Dated: New York, New York
January 20, 2017

Respectfully submitted,

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

Laurel Zuckerman, as Ancillary Administratrix of the estate of Alice Leffmann, Plaintiff, v. The Metropolitan Museum of Art, Defendant.	Index No. 16-cv-7665 DECLARATION OF PROFESSOR DR. IUR. MARCO FRIGESSI DI RATTALMA
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I, Marco Frigessi di Rattalma, declare as follows:

1. I am a lawyer in Milan and was admitted to the Milan Bar in 1990. I am admitted at the Supreme Court of Cassation. I am a full professor of European Law at the Law School of the University of Brescia and Head of the European Law Department at the School of Specialization for the Legal Professions of the same University. I frequently act as arbitrator in the ICC, Uncitral and other administrative and/or ad hoc arbitral proceedings. I act as a counsel at the European Court of Human Rights, European Court of Justice and other international and European tribunals and bodies. I have served as an expert on Italian law in foreign courts, including the London High Court and the United States District Court for the Southern District of New York. I read and write English fluently. I am the author of several books and over sixty articles on topics of private international law, European Union law and international law. My Curriculum Vitae and a list of Publications I have authored or co-authored is attached hereto as Exhibit A.
2. I have been retained by counsel for plaintiff and provided with the Amended Complaint ("AC") and the Defendant's Memorandum of Law in Support of its Motion to Dismiss.



3. I have been instructed to assume the allegations of the “AC” to be true, and have been asked to provide an affidavit of foreign law as to how Italian law would treat the sale of a work by Pablo Picasso entitled “The Actor” (the “Painting”), which took place in late June 1938 (the “Sale”), by its owner Paul Friedrich Leffmann to Käthe Perls, acting on behalf of Hugo Perls and Paul Rosenberg.
4. As set forth below, I have concluded that the “Sale” is: (a) void under Italian Civil Code provisions on “public order” and “morals” and (b) voidable under Italian Civil Code provisions on duress and that the “Sale” was not subsequently ratified.

I. LEGAL FRAMEWORK FOR EVALUATING THE “SALE”

The 1865 and 1942 Civil Codes and the interpretation of “mobile” concepts

5. The provisions of the Italian Civil Code are similar to the French Civil Code of 1804 (“Code Napoléon”), which inspired most of the nineteenth century’s continental European civil codes, including the German Bürgerliches Gesetzbuch (or BGB) that entered into force on January 1st 1900.
6. In this Declaration, I will analyze the Italian concepts of “public order”, “morals” and “duress” enshrined in the pertinent articles of both the 1865 and the 1942 Civil Codes.¹
7. As the “Sale” took place in 1938, it follows that the pertinent articles of the Civil Code of 1865, in effect until the enactment of the Civil Code of 1942, apply. The Italian law concepts discussed are “mobile” concepts that shift over time. Such “mobile” concepts are shaped by judges “in a manner reflecting the changing habits

¹ As part of this analysis, I will reference commentaries. In the Italian Civil Code system, where court decisions are not binding precedent, the opinions and analysis of commentators have an important role in interpreting Italian legal doctrines.



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and sentiments of the citizens: in short, a collective social consciousness".²

8. Thus, the relevant articles of the Civil Code of 1942 will also be considered, as the latter contains provisions which reaffirm the rules contained in the 1865 Civil Code and shed light on their evolution and interpretation.

The relevance of post-war laws

9. After the fall of Fascism, the democratic Italian State proceeded to repeal all anti-Semitic laws and enacted specific provisions to protect Jewish people who engaged in transactions while subject to persecution by the Fascist regime.³
10. When interpreting the above mentioned "mobile" concepts of the Civil Code, the special circumstances of the period of Fascist rule, and the principles and rationale behind the post-war laws enacted by the Italian Republic, have to be taken into account. More specifically, in a case like the one here, it is necessary to construct the above mentioned "mobile" concepts by taking into account the specific Italian post-war provisions, which are a testament to the fact that the Italian legal order affords special remedies and reparative measures to Jewish people and other persons persecuted by the Fascist regime. These provisions give flesh to the concepts of "public order", "morals" and "duress" and show that the Italian legal system acknowledges that sales by Jews under these circumstances are not ordinary commercial transactions.
11. With the fall of the Fascist regime in July 1943 and the subsequent birth of the Italian Republic also came the enactment of the Republican Italian Constitution of 1948 -- and with it the Constitution's principles and powerful underlying values of solidarity, rule of law, and equality in the interpretation of such "mobile" concepts of

² See Guido Alpa & Vincenzo Zeno-Zencovich, *Italian Private Law* 11, 2007, page 11.

³ In particular, the royal law decree of January 20, 1944 no. 25 abrogated nine anti-Semitic laws and regulations restricting the legal capacity of the Jews provided in the Civil Code.

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the Civil Code. Thus, to understand what constitutes “public order”, “morals” or “duress”, these principles of modern Italian law are relevant.

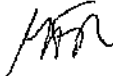
The relevance of internationally accepted principles

12. It is also important to consider pertinent principles that have been accepted internationally. As applied here, these principles are best reflected in the international Principles on Nazi-Confiscated Art affirmed at the Washington Conference on Holocaust Era Assets in 1998 and the Terezin Declaration on Holocaust Era Assets and Related Issues of June 30, 2009 (both of which included Italy as a signatory). The Washington Conference Principles and the Terezin Declaration affirm that one cannot use normal principles of commercial law and apply them to the circumstances of a case involving the Holocaust. As acknowledged by Stuart Eizenstat in his presentation in support of the Principles on Nazi-Confiscated Art at the Washington Conference on Holocaust Era Assets in 1998:

We can begin by recognizing this as a moral matter – we should not apply the ordinary rules designed for commercial transactions of societies that operate under the rule of law to people whose property and very lives were taken by one of the most profoundly illegal regimes the world has ever known.⁴

13. While the Principles on Nazi-Confiscated Art and the Terezin Declaration are not international treaties, Italian law concepts of “public order”, “morals” and “duress” as properly interpreted are consistent with such international instruments, when applied to a sale that took place in 1938 by a German Jew who was forced to flee

⁴ Stuart E. Eizenstat, In Support of Principles on Nazi-Confiscated Art, Presentation at the Washington Conference on Holocaust Era Assets, Washington D.C., December 3, 1998, available at <http://fcit.usf.edu/HOLOCAUST/RESOURCE/assets/art.htm>. Ambassador Eizenstat was appointed by President Clinton as the Special Representative of the President and Secretary of State on Holocaust-Era Issues.



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Fascist Italy after suffering both Nazi and Fascist persecution.

The Exhibits

14. As exhibits, I have provided the Court with true and correct copies of the Italian law referenced herein, along with certified translations:

- Exhibit B is the Italian Civil Code (1865), Articles 12, 1119, 1122
- Exhibit C is the Italian Civil Code (1942), Articles 1343, 1418
- Exhibit D is the Italian Civil Code (1865), Articles 1108, 1111-1114
- Exhibit E is the Italian Civil Code (1942), Articles 1427, 1434-1437
- Exhibit F is the Italian Civil Code (1865), Article 1309
- Exhibit G is the Italian Civil Code (1942), Article 1444
- Exhibit H is Article 19 of legislative decree lieutenant April 12, 1945, no. 222
- Exhibit I is the Italian Civil Code (1942), Article 1448
- Exhibit J is the Republican Italian Constitution of 1948, Article 2

II. THE SALE IS VOID AS CONTRARY TO PUBLIC ORDER AND MORALS

15. Both under the 1865 Civil Code and the 1942 Civil Code the “Sale” is void. This is so because the “causa” of the “Sale” is unlawful as it is against “public order” and, respectively, “morals”, as it is explained in the following paragraphs.

Legal Framework of “Public Order” and “Morals”

16. Article 12 of the 1865 Civil Code states that private agreements shall not violate the “public order”.

17. The 1865 Civil Code under the title “About the <causa> of contracts” provides:⁵

Article 1119. An obligation without <causa>, or based on a fraudulent or unlawful <causa> cannot have any effect.

Article 1122. The <causa> is unlawful when it is contrary to the law,

⁵ The literal translation of the term “causa” is “consideration”. The term is more broadly understood under Italian law, however, to encompass the “purpose” of the contract.

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public morality or public order.

18. Similar provisions are restated in the Civil Code that came into force in 1942:

Article 1343. "Unlawful <causa>" "The <causa> is unlawful when it is contrary to mandatory rules, public order, or morals".

Article 1418. "Causes of voidness of the contract" "A contract is rendered void by the lack of one of the requisites indicated in article 1325, unlawfulness of <causa>".

19. The principles underlying these statutes were explained by a well-known Italian scholar at the beginning of the 19th Century:

The principle of the voidness of contracts which are immoral or contrary to public order performs the role of a subsidiary rule with respect to the prohibitions established by the Civil Code. . . In fact, the legislator could foresee with his mind, trained by the experience of the past, and prevent certain abuses, some unjust actions, certain unfair terms, condemning them with a specific ban, but all the foresight of the legislator would not be sufficient to hit the endless variety of fraudulent contracts that the interest and selfishness of the contracting parties would have conceived at all times. Therefore it needed a mobile factor that in analogy to the free mobility of the intention of contracting parties lend a force for declaring the voidness of the contract always ready and effective. Therefore, the law has introduced this principle, that everything that is contrary to good morals and public order is void.⁶

20. "Public order" is composed of a set of general rules and principles that the Italian legal system considers primary and indispensable. The Supreme Court defines "public order" as the fundamental principles of the Italian legal system (Court of Cassation, 8 June 1993 no. 6381).

21. The purpose of "public order", as interpreted, is to "protect public interests", in the context of both family relations and relations of an economic nature.

22. "Public order" puts limits on the contractual autonomy of individuals, to the extent

⁶ Francesco Ferrara, *Teoria del negozio illecito nel diritto civile italiano*, 1902, Milano, page 296.



that a particular transaction is inconsistent with the fundamental values of the Italian legal system.⁷ The concept of what violates the “public order” shifts over time.⁸

23. Thus, a contract whose “causa” is contrary to “public order” is unlawful and is thus considered void *ab initio* both under the 1865 Civil Code as well as the 1942 Civil Code.
24. As said above, a further independent cause of voidness of the “Sale” is that the “causa” of the “Sale” is against “morals”.
25. “Morals” generally refers to the social, moral and ethical requirements on which a society is based.
26. With respect to the statutes on “morals”, the purpose is to ensure that contracts that are contrary to the fundamental rules of public morality have no legal effect, even if otherwise not prohibited by law.⁹
27. These Italian Civil Code provisions are consistent with the universal norm under general jurisprudence in Europe that one must protect the weak party to the contract and reflect the notion of general equity as a means of doing justice that is deeply embedded in Italian jurisprudence.¹⁰

The “Sale” is void as against “Public Order” and “Morals”

28. It is here assumed that, as affirmed in the “AC”, among other things:
 - [Paul] and his wife, Alice, were forced to flee Germany in fear for their lives, after losing their business, livelihood, home and most of their possessions due

⁷ Giovanni Battista Ferri, voce Ordine pubblico (dir. priv.), in Enciclopedia del diritto vol. XXX, Milano.

⁸ See Guido Alpa & Vincenzo Zeno-Zencovich, Italian Private Law 11, 2007, page 11.

⁹ See Alberto Trabucchi, Buon costume, in Enciclopedia del diritto, vol. V, Milano, 1959; Court of Cassation, 15 February 1960, no. 234 in Giust. civ., 1960, I, page 961; Court of Cassation, 14 May 1955, no. 1378, in Temi, 1955, page 441.

¹⁰ See, c.g., C. Mandrioli, Diritto processuale civile, Volume I, Giappichelli, page 110 (noting that under Section 113 of the Italian Civil Procedure Code, the judge, in all the cases provided by law, is entitled to render his or her judgment pursuant to equity).

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to Nazi persecution.

- Shortly after their arrival, Mussolini and his Fascist regime increasingly adopted and implemented the Nazi pattern of rampant anti-Semitic policies and outright physical persecution of Jews, especially of immigrants from Austria and Germany.
- By 1938, it was clear that remaining in Italy was no longer an option, and, desperate to flee, the Leffmanns were forced to sell their remaining possession of substantial value, The Actor, at a price well below its actual value.
- [The Leffmanns] left Italy a few months after the sale, in October 1938, only days after the racist laws expelling foreign Jews from Italy were enacted.¹¹

29. Furthermore it is here assumed that, as stated in the "AC", the purchasers of the Painting had good reason to know that: "they [had] just acquired a Picasso masterpiece from a German Jew on the run from Nazi Germany living in Fascist Italy for a low price that reflected the seller's desperate circumstances and the extraordinary prevailing conditions."¹²

30. Under these conditions, the "Sale" is void as against "public order" and "morals" under the 1865 Civil Code, as well as the 1942 Italian Civil Code.

31. This conclusion is supported by both the fundamental principles of the Republican Italian Constitution of 1948 and the specific post-war laws enacted in Italy to address the wrongs inflicted upon Jews. Especially given the "mobile" concept of "public order", it would be absurd and immoral to interpret the 1865 Civil Code in the abstract and without the benefit of the insight provided by the post-war laws with regard to the Holocaust era.

32. With respect to the Republican Italian Constitution of 1948, Article 2 states:

The Republic recognizes and guarantees the inviolable rights of the person, as an individual and in the social groups within which human personality is developed. The Republic requires that the fundamental duties of political, economic and social solidarity be fulfilled.

¹¹ "AC" para 2.

¹² "AC" para 38.

33. The Italian courts have stressed that they can, sua sponte, find a contract void as against “public order” and “morals”, in conjunction with Article 2 of the Constitution, when its terms are severely unfair and unbalanced to the prejudice of one contracting party.¹³
34. Through the lens of the post-war laws, the imbalance at issue here is even more apparent.
35. Article 19 of legislative decree lieutenant April 12, 1945, no. 222 (Official Journal, May 22, no. 61) shows that the Italian legal system developed a specific policy and specific rules protecting Jewish individuals affected by anti-Semitic laws who sold goods under such dire circumstances.¹⁴
36. Article 19 provides a simplified way for a Jewish seller to nullify an unbalanced contract, reflecting the acknowledgment by the Italian legislature that facts and circumstances of a case involving the Holocaust are so different that ordinary commercial rules do not apply. In the framework of such a law, a Jewish seller is considered the weak party to the contract who needs to be afforded special protection

¹³ Italian Constitutional Court, no. 248 of 2013 and no. 77 of 2014.

¹⁴ Article 19 states that:

For sales contracts stipulated by people affected by the racial provisions after October 6, 1938 – the date when the directives on racial matters issued by the former regime were announced – the rescission is allowed pursuant to Articles 1448 and following of the Civil Code until one year after the end of the state of war, so long as the damages exceed one fourth of the value of the item sold at the time of the contract.

It is noteworthy that Article 19 establishes a derogation from the ordinary rules. Article 1448 of the 1942 Civil Code provides that in order to warrant rescission based on an imbalanced exchange, there must be a disproportion of more than one-half between the purchase price and the true value. The fact that the trigger for rescission of the contract in favour of the Jewish seller is reduced by the post-war law from the ordinary one-half of the value of the good sold to one-quarter of such value shows that the Italian legislature acknowledged the extraordinary situation of distress which characterized the life of Jewish people in Italy during the relevant period of the Fascist regime.

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under Italian law - a protection that goes well beyond ordinary contractual remedies.

37. As an example of the application of Article 19, the court in the Tribunal of Turin, judgment 11 January 1949, in Foro it., 1950 (Haas v. Cisitalia) ordered the rescission of a sale by a foreign Jew, of property sold in January 1939 (i.e. two months before Italy's expulsion of foreign Jews). In ordering the rescission, the court found that: "every Jew, by the mere fact of being registrable as such, had reason to fear a sudden worsening of persecution, to the detriment of his or her person and property."¹⁵
38. In sum, the Italian legal system cannot recognize the validity of a contract in which a purchaser has obtained an imbalanced price by taking advantage of the state of necessity and of the dire circumstances in which the seller found himself. Especially when these circumstances involve the Holocaust, as is the case here, the application of legal force to the "Sale" would be contrary to the fundamental principles of "public order" and "public morality" as defined by Italian law.

The "Sale" is void and could not be subsequently ratified

39. According to both the 1865 Civil Code as well as the 1942 Civil Code, a void contract may not be subsequently ratified.¹⁶ The theory behind this basic principle has been explained in legal doctrine:

The voidness of an unlawful contract is incurable. No renunciation can suffice to cause something nonexistent to become real... The ratification is needless, as ratification presupposes an existing contract, although flawed, while the unlawful contract never existed and is a dead being from the outset and the will of individuals cannot resurrect it.¹⁷

¹⁵ Of note, Article 19 has also been applied by Courts to sale contracts executed before the entry into force of the anti-Semitic laws. This interpretation has been based by the Courts on the rationale of the fear procured in Jewish sellers by the pre-announcement of the incumbent anti-Semitic legislation (Tribunal of Turin, Judgment 5 July 1947, in Foro it., 1948, page 591).

¹⁶ Francesco Ferrara, Teoria del negozio illecito nel diritto civile italiano, page 271 ("The right to plead voidness is not subject to prescription and can be exercised perpetually...")

¹⁷ Francesco Ferrara, Teoria del negozio illecito nel diritto civile italiano, page 296.

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40. As such, the "Sale" here could not have been subsequently ratified.

III. THE "SALE", AS ALLEGED, WAS MADE UNDER DURESS

Legal framework of "Duress"

41. The Italian 1865 Civil Code contained provisions, which are relevant for the case here discussed:¹⁸

1108. Consent is invalid if it was given in error, extorted by violence or extracted with deceit.

1111. Violence applied against a person accepting an obligation makes the contract null and void, even though it may have been applied by someone other than the person to whose advantage an agreement is being adopted.

1112. Consent is deemed extorted by violence, when it is of such a nature as to impress a reasonable person and to cause him to fear that he or his property will be exposed to an unjust and considerable injury. In this respect, the age, sex and condition of the persons shall be considered.

1113. Violence makes the contract void also when the threatened evil is addressed to the person or assets of the contracting party's spouse, ascendant or descendant. If other persons were involved, the judge shall decide whether the contract is void taking into account all relevant circumstances.

1114. Overwhelming fear without violence is not sufficient to make the contract void.

42. According to Italian case law, duress need not emanate from a particular person who entered into the contract. Duress may emanate from a government, political regime or social environment.

43. In the commentary to the Supreme Court decision of February 15, 1950 no. 376,¹⁹ where a gift made by a workers' cooperative to a Fascist organization as a result of political violence was declared invalid because it had been extorted through duress,

¹⁸ Similar provisions are restated in the Civil Code which came into force in 1942.

¹⁹ Court of Cassation of February 15, 1950 no. 376, Foro Padano 1950, II, 1146.

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Professor Valerio Cottino stated that:

any time the threat, as adequately found by the Court, appears to be the immediate and direct consequence of a general situation represented by a dictatorship, the same can be qualified as a political threat and evidence of the political violence is *in re ipsa*, i.e. in the general situation.²⁰

44. Thus, Italian law considers this type of third party "violence" or duress to be "moral or political violence". The latter is defined as a "state of fear" generated by a political party or regime.
45. Under Italian law the counterparty to the contract does not need to be in bad faith and does not need to be aware of the threat faced by the person under duress for the contract to be deemed invalid.
46. Furthermore, the violence does not have to be presently occurring or imminent; it can be something that is lurking in the future (but it may not be a mere supposition).
47. In more recent years, Italian commentators have supported the position that a situation of political violence can qualify as a sufficient threat to constitute duress.²¹
48. This interpretation was clearly expressed in a case addressed by the Court of Palermo in 1972 (Puleo vs. Nicolosi). In Puleo, the plaintiff alleged that his father was forced to sell real estate at a low price because of the influence of a mafia boss controlling the territory. The court found that the contract had been extorted through duress, even though there was no evidence of a direct and specific threat.
49. The Court held that in Mafia cases, the recurring violent behavior of the Mafia-affiliated members and their customary retaliatory threats against anyone daring to resist provide sufficient grounds for establishing duress.

²⁰ Valerio Cottino, *Violenza privata e violenza politica*, *ibidem*, 1149.

²¹ See, e.g., Dogliotti-Figone, *Giurisprudenza del contratto*, III, Milano, 2003, p. 214 et seq.; Figone, *La violenza*, Milano, 2005, p. 76.

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50. The case was praised by commentators, who emphasized that the concept of duress should be interpreted by taking into account all the historical, sociological and political circumstances under which a particular transaction has occurred.²²
51. In its Memorandum of Law in Support of its Motion to Dismiss, the Defendant cites certain cases to support its contrary position that persecution by the Fascists is too generic of a threat to constitute duress, including Court of Cassation, 21 Mar. 1963, No. 697.
52. In direct response to that Court of Cassation decision, renowned law professor Arturo Carlo Jemolo, in an article published in one of the most important Italian law reviews, fiercely criticized the theory that the political violence of Fascists could only be considered a “reverential fear” and not duress.
53. According to Professor Jemolo, whose position has been endorsed by other commentators,²³ the claimant’s fear should have been given greater weight when it was based on the objective circumstance of a powerful third party who is known for his violence and for harm which has been inflicted upon other persons who have rebelled against this person’s wishes; i.e. even in the absence of a particularized threat, a finding of duress is appropriate where it arose from a justifiable conviction that denial and resistance would lead to reprisals whose severity could not be foreseen.
54. This Court of Cassation case is also factually distinguishable on a fundamental level. It did not concern a sale by a Jewish individual suffering Nazi and Fascist persecution, or even a political opponent of the Fascist regime. This case involved an

²² See Mazzaresse, *Violenza mafiosa, violenza politica e violenza morale*, *Giur It.* 1974, I, 2, 987 et seq.

²³ See, e.g., Dogliotti-Figone, *Giurisprudenza del contratto*, III, Milano, 2003, p. 214 et seq.; Figone, *La violenza*, Milano, 2005, p. 76.

Italian entity seeking to cancel a transaction entered into during the company's stockholder's meeting.

55. The other cases cited by the Defendants suffer similar critical infirmities:

- In Court of Appeal of Rome, 9 Apr.- 31 Aug. 1953, the court denied a duress claim made by a powerful political organization, finding that persecution by the Fascists had ceased some years before. This case is inapplicable to the circumstances here, in which a German Jewish *individual* was forced to sell the Painting in order to flee the *ongoing* "Nazi pattern of rampant anti-Semitic policies" implemented in Italy by the Fascists at the time of the "Sale".
- In Tribunal of Bologna, 26 Feb. 1952, the claimant and his son, both of whom were neither Jewish nor political opponents of the Fascist regime, entered into a transaction with local party officials for the sale of land. During the course of the sale, the officials raised neither "political retaliation, nor imprisonment" "as possible consequences of [] resistance" to the transfer -- using merely "empty words" that were "alien to any and all violence". The claimant also received an appropriate price for the land: the price reflected the property's "real value". As a consequence, the Court determined that the need to sell was not proportionate to the danger of the situation.
- In Court of Cassation, 17 Mar. 1954, the plaintiff was neither a Jew nor an opponent of the Fascist regime. As a result, the plaintiff was able to sell the real estate "without suffering harassment by the [] Fascists". Moreover, the Court of Cassation determined that the purchase price corresponded to "the value of the real estate". As alleged in the "AC", however, the Painting was sold "at a price well below its actual value". ("AC" para 2).

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56. Even in the Court of Cassation, 21 March 1963, No. 697 case cited by the Defendant, the court recognized that a threat may be “presented latently or discreetly, or at least presumed in view of the behavior of the Fascist Party in similar cases”.
57. When applied to German Jews living in Florence in June 1938, it is difficult to envision a situation where a threat cannot be more reasonably presumed.

The “Sale” was infected by “Duress”

58. Based on the analysis of Italian law as reflected in the foregoing cases and commentaries, as applied to the allegations in the “AC”, the “Sale” was infected by duress.
59. The allegations in the “AC”, including those listed below, make clear that the threat posed to the Leffmanns by the Nazis and the Fascists was very real, and far more than a mere supposition:
- By the fall of 1937, anti-Semitism in Italy, including in the highest levels of the Ministry of the Interior, dashed any illusions about a longer stay in Italy for the Leffmanns. That fall, Germany and Italy began to prepare for Hitler’s visit to Italy. In October, the Ministry of the Interior created lists of all German refugees residing in Italy’s various provinces. The lists were intended to draw clear distinctions between “those who supported the Nazi regime” and “anti-Nazi refugees” or Jews. This was the first time that the Italian Government had explicitly associated all German Jews with anti-Nazi Germans. This marked a turning point in the 1936 Italo-German Police Agreement, with the Gestapo requesting these lists so that it could monitor “subversives” in anticipation of Hitler’s visit. From the beginning of January 1938 until Hitler’s visit in May, the Gestapo received a total of 599 lists from the police throughout Italy’s provinces.
 - Meanwhile, conditions for Jews in Italy only grew worse. On February 17, 1938, every newspaper in Italy published a Government announcement (“Diplomatic Notice Number 18,” issued on February 16), which stated that “[t]he Fascist Government reserves to itself the right to keep under close observation the activity of Jews newly arrived in our country.”
 - In March 1938, SS General Heydrich traveled to Rome to meet with the head of the Italian Police, Bocchini, in order to plan for Hitler’s visit. Nazi police officials were posted at 13 Police Headquarters in border towns, ports and large cities to conduct interrogations and house searches. These officials, dressed in Nazi uniforms, arrived on April 10-11, 1938.

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Meanwhile, on March 18, 1938, the Italian Ministry of the Interior informed prefects in border provinces that "ex-Austrian Jewish subjects" should be denied entry into Italy.

- Also in March 1938, the Italian Minister of Foreign Affairs informed the U.S. Ambassador to Italy that Italy would not be participating in the international initiative to "facilitate" the emigration of "political refugees" from Austria and Germany. Italian newspapers made clear that "political refugees" was a synonym for Jews.
- Just days after writing to de Hauke, the situation in Italy grew even worse. From April 24-26, General Heydrich, SS Reichsführer Heinrich Himmler (whom Hitler later entrusted with the planning and implementation of the "Final Solution") and SS General Josef "Sepp" Dietrich, the commander of Hitler's Leibstandarte (Hitler's personal army), went to Rome to complete preparations for Hitler's visit. For three weeks in April and May 1938 there were over 120 Gestapo and SS officers in Italy -- primarily in Florence, Rome and Naples. The Gestapo officials and Italian police continued investigations and surveillance of "suspicious persons" until the end of Hitler's visit, arresting at least 80 people in Florence. The arrests were carried out by the Italian police. Many German Jewish residents fled in anticipation, and as a result, of these arrests.
- On May 3, Adolf Hitler arrived in Italy for his official state visit. It was a momentous occasion for Mussolini, and the Italian people turned out in the tens of thousands to greet the German leader. From May 3 through May 9, 1938, Hitler traveled to Rome, Naples and Florence. This was no typical state visit. Mussolini, anxious to strengthen the Axis alliance, made sure that Italy spared no expense in putting on its grandest show for Hitler. The streets of these Italian cities were covered in thousands of Nazi swastika flags, which flew alongside Italy's tricolor; flowerbeds were decorated in the shape of swastikas and photographs of Mussolini and Hitler were made into postcards and displayed in shop windows. Parades and military displays in honor of Hitler, attended by thousands of Italians, young and old, took place in every city he visited. In Florence, the last city visited by Hitler on May 9th, city officials made an official postmark that commemorated Hitler's visit. Mail sent during that time was stamped "1938 Il Führer a Firenze" and decorated with swastikas.
- In July 1938, the Leffmanns, as German Jews, submitted their "Directory of Jewish Assets" forms detailing all of their assets, which the Reich required all Jews (even those living abroad) to complete. The penalties for failing to comply with this requirement included "fines, incarceration, prison, seizure of assets."
- Meanwhile, the plight of the Jews in Italy deteriorated even further. In August 1938, enrollment of foreign Jews in Italian schools was prohibited. A Jewish census, in which the Leffmanns were forced to participate, was conducted in preparation for the Italian racial laws, which were soon to follow. A legal definition of what constituted a "Jew" was considered, and

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discriminatory legislation was drafted. The Italian government increased surveillance of Jews because of the fear that Jews would transfer their assets out of Italy or emigrate and take their assets with them. A series of anti-Semitic publications were released, among them the infamous "*Manifesto degli scienziati razzisti*" ("Manifesto of the Racial Scientists"), which attempted to provide a scientific justification for the coming racial laws, and the venomous magazine, "*La difesa della razza*" ("The Defense of the Race"). In addition, a number of regional newspapers published lists of many of the names of Jewish families residing in Florence.

- On September 7, 1938, the first anti-Semitic racial laws were introduced in Italy, including "Royal Enforceable Decree Number 1381," which was approved by the Council of Ministers on September 1st and was published in daily newspapers on September 2nd. It was signed by the King on September 7th and was published in the "*Gazzetta Ufficiale*" on September 12th. With this Enforceable Decree, all "alien Jews" were forbidden from residing in Italy. All Jews who arrived in Italy after January 1, 1919 had to leave Italy within six months (i.e., by March 12, 1939) or face forcible expulsion. Bank accounts opened in Italy by foreign Jews were immediately blocked. At that point in 1938, Italy's anti-Jewish measures had become extremely draconian, and in some instances had become even harsher than the corresponding measures enacted in Germany.²⁴
60. Under these circumstances, the "Sale" by the Leffmanns in June 1938 to fund their continuing flight must be seen as a direct consequence of political violence and a transaction made while living in a state of fear.
 61. This conclusion is reinforced by the post-war laws, which have to be taken into account when interpreting the "inobile" concept of "duress".
 62. The notion of "acts of violence" arising from the Fascist dictatorship in Italy was incorporated in Italian post-war legal provisions aimed at offering reparative measures to persons persecuted by the Fascist regime, including Jews affected by anti-Semitic legislation. In particular, article 1, lett. c) of the law of 10 March 1955, no. 96 provides that persons who were persecuted for racial reasons were entitled to these measures, provided that they had been the victim of "acts of violence".
 63. Anti-Semitic legislation and implementing measures have been interpreted by the

²⁴ "AC" para 29-31, 34-35, 39-41.



Corte dei Conti, the Italian Court in charge of State accounting matters, as *per se* acts of violence (“atti di violenza”) that are a severe and morally despicable offense to the fundamental human values.²⁵

64. It would be unimaginable to apply the Italian law of duress to the “Sale” without the recognition of these extraordinary circumstances.²⁶

The “Sale” is voidable and was not subsequently ratified

65. According to Article 1111 of the 1865 Civil Code:

Violence applied against a person accepting an obligation makes the contract null and void. . .

66. The express terms of Article 1111 state that the duress experienced by the contracting person makes a contract null and void (“nullo”) and not voidable. Authors and court cases, however, frequently used the two terms interchangeably in this context (See Pacifici-Mazzoni, Istituzioni di diritto civile italiano, 1914, Fratelli Cammelli, Volume 1, Part 2 pages 594-595) and commentators have interpreted Articles 1108 and 1111-1114 of the 1865 Italian Civil Code to suggest that duress renders a contract voidable rather than void. This interpretation of the duress provision was incorporated into the 1942 Italian Civil Code, which provides that contracts made under duress are voidable.

67. As a result, I will consider the question of whether the Leffmanns ratified the sale based upon the allegations in the “AC”.

68. Under the Italian Civil Code of 1865 (Article 1309), as well as the Civil Code of 1942 (Article 1444), a contract affected by duress may only be ratified if the duress

²⁵ Corte dei Conti, Sezioni Riunite, Judgment no. 8-2003, 25 March 2003, page 10.

²⁶ This recognition of the terrible uniqueness of the Holocaust is consistent with international instruments like the Terezin Declaration and the Washington Principles (to which Italy is a signatory), which express a globally recognized approach toward Holocaust related safe contracts.

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has ceased and the affected party makes an explicit declaration that he or she intends to ratify the contract, or the affected party spontaneously performs an open contractual obligation.

69. In the case at hand there was no ratification by the Leffmanns.

70. The Leffmanns neither made any explicit declaration by which they affirmed that they ratified the contract, nor spontaneously performed a contractual obligation after the duress had ceased.

71. It must be stressed that, according to Italian law, the simple inaction or silence by the person who is entitled to challenge the contract does not amount to ratification. The statement by the Defendant, according to which ratification could take place "by simply not repudiating within the five-year limitation period, which runs from when the duress has ceased" is thus not correct.²⁷

72. Moreover, the Defendant is mistaken in stating that the Leffmanns ratified the contract by receiving and retaining the proceeds of the "Sale" and by failing to make "a post-war claim for the Painting"²⁸ (which Defendant just assumes was an option):

- a) When the performance of the contract took place in 1938, the duress was still in place. So the fact that Paul Leffmann performed his contractual obligations in June 1938 in no case can amount to ratification of the contract;
- b) It is alleged in the "AC" that the proceeds were needed to fund the Leffmanns' escape, and there is no way that such a dire need would be deemed evidence of ratification;
- c) Once Leffmann provided the Painting to the purchasers and received payment, no other contractual performance was left for Leffmann to

²⁷ Defendant's Memorandum page 14 note 9.

²⁸ Defendant's Memorandum page 15.

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subsequently perform (which otherwise could potentially give rise, once duress had ceased, to ratification through performance);

d) In light of the post-war laws implemented by Italy, Italian courts would not apply normal principles of commercial law to the conduct of persons in the situation of the Leffmanns, i.e. elderly Jews returning to the turmoil of post-war Europe.

73. Thus, based on the "AC", it is not possible to conclude that the Leffmanns ratified the contract.

CONCLUSION

74. It is my opinion that the "Sale" is void, and even if the "Sale" was found to be voidable rather than void, that the Leffmanns did not ratify the "Sale".

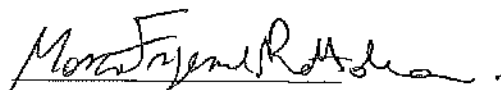


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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on January 19, 2017.

A handwritten signature in cursive script, reading "Marco Frigessi di Rattalma".

Professor Dr. IUR. Marco Frigessi di Rattalma

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EXHIBIT A

Professor Dr. IUR Marco Frigessi di Rattalma

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Curriculum Vitae

Current position: Full Professor of European Law; Head of the European Law Department at the School of Specialization for the Legal Professions
Università di Brescia – Dipartimento di Giurisprudenza

Education: 1984 University of Milan School of Law (magna cum laude, degree with honors); 1989 – Ph.D. in Private International Law

Foreign languages: English, German and French.

Bar Admissions: Lawyer, Avvocato, admitted at the Milan Bar. Registered at the Albo dei Cassazionisti. Admitted to the Italian Supreme Court (Suprema Corte di Cassazione)

Italian and European legal experience:

Act as arbitrator in the ICC, Uncitral and other administrative and/or ad hoc arbitral proceedings; counsel at the European Court of Human Rights, European Court of Justice and other international and European tribunals and bodies; and expert on Italian law in foreign courts, including the London High Court and the United States District Court for the Southern District of New York.

Academic experience:

2000- Present: Professor of European Law at the Law School of the University of Brescia; Head of the European Law Department at the School of Specialization for the Legal Professions
2005-2006: Responsible for Project of Research of Relevant National Interest (PRiN-Italian Ministry for University): The Convention on the International Sale of Goods-CISG
1998-2000: Associate Professor of European Law, Università di Sassari (Facoltà di giurisprudenza)
1996-1998: Lecturer of International law, Università di Trento (Facoltà di giurisprudenza)
1991-1998: Researcher of International law, Università di Trieste (Facoltà di giurisprudenza)
1989: PHD in International law – Milano Università Statale
1984: Law Degree, Università di Milano. Thesis in private international law “L’autonomia della volontà: teorie classiche e recenti sviluppi” Prof. Mario Giuliano, Prof. Roberta Clerici, Prof. Nerina Boschiero.

Professional experience:

2014- Present: Studio legale Avv. Prof. Marco Frigessi di Rattalma (Milan)
2011-2014: Of counsel – Simmons & Simmons Milan
2003-2011: Of counsel – Studio Legale Lombardi Molinari e Associati (Milan)
1998-2003: Studio legale Avv. Prof. Marco Frigessi di Rattalma (Milan)

Practice areas:

Specializing in Italian private international law, European Law and International law with an emphasis on international contractual, corporate and insolvency matters

PRINCIPAL PUBLICATIONS:

Books:

The Dieselgate: a Legal Perspective, Springer Verlag (forthcoming)
Il contratto internazionale di assicurazione, Cedam, Padova, 1990
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La disciplina della concorrenza in ambito assicurativo, (a cura di) Marco Frigessi di Rattalma, 2014, Torino

Articles (since 1991):

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La riforma della governance mondiale nel tempo della crisi, LA COMUNITÀ INTERNAZIONALE, 2011, n. 2, p. 211-230.

Co-author (since 2005) of the Chapter for Italy in "The International Comparative Legal Guide to International Arbitration" published by Global Legal Group

Diritto antitrust e scambio di informazioni: la sentenza del Consiglio di Stato nel caso "Iama Consulting", ASSICURAZIONI: Rivista di diritto, economia e Finanza delle Assicurazioni Private, ASSICURAZIONI, 2011, vol. 3, p. 410-424.

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Frigessi di Rattalma Marco (2014). Assicurazione dei rischi da calamità naturali: vincoli europei e possibili soluzioni normative italiane. In: Landini Maracchi. CAMBIAMENTI CLIMATICI, CATASTROFI AMBIENTALI E ASSICURAZIONE. CLIMATE CHANGE, ENVIRONMENTAL CATASTROPHIC EVENTS AND INSURANCE. p. 69-75, FIRENZE: Fondazione CESIFIN

La legittimità dei parametri risarcitori previsti dall'art. 139 cod. ass. dopo la sentenza della Corte di Giustizia Europea e della Corte Costituzionale, in (a cura di) Paolo Mariotti, Le novità sul risarcimento del danno alla persona tra norme e giurisprudenza, 2015, p. 37 ff.

Speaking engagements:

Brescia 14 luglio 2016, "La direttiva 2014/95/UE in merito alle informazioni di carattere non finanziario e sulla diversità da parte di talune imprese e di taluni gruppi di grandi dimensioni"

Rovereto (SDA Bocconi School of Management), 19 maggio 2016, "Principi contrattuali internazionali"

Milano (Allianz S.p.A.), 6.5.2016, "Assicurazioni e risarcimento dei danni da illecito transfrontaliero".

CONVEGNO CESIFIN - AIDA Toscana L'intermediazione dopo la IDD e nuove prospettive nel settore sanitario, 5 febbraio 2016, "Gli intermediari comunitari"

Paris, 2 December 2015, AIDA, "Dieselgate: main legal issues"

Milano, 20.5.2015, (Ordine commercialisti di Milano), "Le novità della Direttiva contabile 2013/34/UE e le modifiche proposte dallo schema di decreto legislativo di attuazione"

Milano (Vittoria Assicurazioni S.p.A.) 16 gennaio 2015, La legittimità dei parametri risarcitori previsti dall'art. 139 cod. ass. dopo la sentenza della Corte di Giustizia Europea e della Corte Costituzionale

Milano CONSIGLIO SUPERIORE DELLA MAGISTRATURA, UFFICIO DEI REFERENTI PER LA FORMAZIONE, 7 giugno 2012, "Le fonti del diritto dell'Unione europea" Firenze, 28 maggio 2012, CESIFIN, "L'assicurazione dei rischi catastrofici in Europa"

Febbraio, 28 2011, Università di Brescia, Lectio Magistralis. "La riforma della governance economica mondiale nel tempo della crisi"

Paris, 20 maggio 2010 "Climate Change and Insurance" - The XIIIth AIDA International Insurance Law Association -World Congress
Università di Brescia, Giurisprudenza, 14 maggio 2010 con il Prof. Antonio Tizzano, Giudice alla Corte di Giustizia dell'Unione europea, "L'adesione dell'UE alla CEDU"
Milan, April 2010, Seminar organized with Gabriel Moss QC, "European Insolvency Law in the Credit Crunch Recession"
Brescia, febbraio 2010, Camera di commercio, "La Convenzione dell'Aja sul trust e la legittimità del trust interno"
Milano, gennaio 19 2010, organizzato da AIDA, International Insurance Law Association, "Cooperazione di Stato ed Imprese nell'assicurazione delle calamità naturali"
Padova, 19 maggio 2009 organizzato da AIDA, International Insurance Law Association, "Compulsory Insurance: problems and prospects"
Milano, aprile 2009 organizzato da Paradigma, "Gli obblighi di protezione dell'assicurato e le regole di comportamento relative ai prodotti assicurativi prestati cross-border"
Parma, dicembre 2008, organizzato da Università di Parma "L'esecuzione delle sentenze straniere"
Milano, novembre 28 2008, organizzato da AIDA, International Insurance Law Association, "La circolazione dei prodotti assicurativi/finanziari in U.E."
Milano, giugno 17 2008, organizzato da SIOI, "Giurisdizione e legge applicabile in tema di revocatoria fallimentare"
Trento, April 2007, Master in Transnational Law, "The EC regulation 1436/2000 and its impact on the Italian Bankruptcy law"
Milano, febbraio 13 2007, organizzato da AIDA, International Insurance Law Association, "La Corporate Governance delle Compagnie di assicurazioni"
Brescia, Università, Giurisprudenza, 24 marzo 2006, con il Professor Giuseppe Tesauro, "Erosione della sovranità dello Stato: mito o realtà?"
Brescia, Università di Brescia, Ottobre 2005, Presidenza del Convegno "La tutela transnazionale dei crediti" e relazione "Profili dell'insolvenza internazionale"
Trento, Master in Transnational Law, April 2004, "The forum for contractual and extracontractual disputes under the Bruxelles I EC Regulation"
Parma, Università, Facoltà di Giurisprudenza, 2003, "Il concetto del Centro principale degli interessi"
Napoli, Aprile 2002, organizzato da Assotrust, "Il trust in Italia. Aspetti di diritto internazionale privato e processuale"

Memberships:

Scientific Committee of the Law Review "Assicurazioni"
Editorial board of the "Rivista di diritto internazionale privato e processuale", Milan
Scientific Committee of the Law Review "Diritto del mercato assicurativo e finanziario"
Steering Committee - International Association of Insurance Law - Associazione internazionale di diritto delle assicurazioni - ITALIA
Vice Chairman of AIDA International Working Group "Climate Change"
Chairman of the AIDA Scientific Committee -Sezione Lombarda
Member of the SIDI- Società italiana di diritto internazionale- Italian Society of International Law